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MEMORANDUM **(updated 6/20/12)**

This memorandum lists the instructions the Tennessee Pattern Jury Instruction Committee (Criminal) changed or created after the 15th edition of the book was published in 2011. The Administrative Office of the Courts' website includes Word and WordPerfect "without comments and footnotes" versions of the instructions at issue. The "with comments and footnotes" version of newly-created instructions 8.08(b), 10.05(d), 10.08(a), 10.15(b), 10.23, 11.03(b), 30.17(b), 31.17, 31.18, 31.19, 31.20, and 34.09 are attached to this memorandum.

3.01 – Criminal Responsibility, etc.

- a. Insert the following sentence at the end of the paragraph on p. 31 which begins "[A defendant who is criminally responsible . . .]": [With regard to Count ____ charging the defendant(s) with Murder in the Perpetration of _____, this natural and probable consequences rule does not apply. There is no requirement that the killing be foreseeable in order to hold a defendant criminally responsible, only that the defendant intended to commit the alleged _____.]
- b. After the closing bracket, insert a footnote with the following text: *State v. Winters*, 137 S.W.3d 641, 659 (Tenn. Crim. App. 2003), *perm. app. denied* (Tenn. 2004).

4.04 – Soliciting Minors to Engage in [Certain Conduct]

- a. Renumber as 10.22.

5.01 – Violation of RICO Act

- a. On the second line at the top of page 55, delete "entities.]" and substitute the following: entities [for offenses committed on or after 7/1/12: , including criminal gangs, as defined in § 40-35-121(a)].

6.01 – Assault

- a. At the end of the "fetus" paragraph, delete "[only for offenses committed on or after 7/1/11: Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was

pregnant.]” and substitute the following: **[only for offenses committed on or after 7/1/11 but prior to 7/1/12:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] **[only for offenses committed on or after 7/1/12:** Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]

6.02 – Aggravated Assault

- a. In Part A on page 62, delete the period at the end of element (2)(b), substitute a semi-colon, and add the following text after element (2)(b):

or

(c) **Only for offenses committed on or after 7/1/11:** that the defendant attempted or intended to cause bodily injury to another by strangulation.

- b. At the end of element 3 of Part A AND Part E, delete the second closing bracket and insert the following:

[and

(4) **only for offenses committed on or after 7/1/12:** that the defendant committed the offense while acting in concert with two (2) or more other persons.]]

- c. Following the term “attempted” in the new element (2)(c) of Part A, add a footnote with the following text: The trial judge may wish to charge Criminal Attempt in appropriate fact situations. See T.P.I. – Crim. 4.01 (Criminal Attempt).
- d. Immediately prior to the definition of “bodily injury” add the following new definition: [“Acting in concert” means such conduct that would make one criminally responsible for committing or facilitating the offense.]FN [If this definition is charged, the trial judge should utilize T.P.I. – Crim. 3.01, Criminal Responsibility and T.P.I. – Crim. 3.02, Facilitation.] THE FOOTNOTE TEXT WILL BE AS FOLLOWS: T.C.A. § 39-12-301(1).
- e. Add the following as a new definition in brackets immediately prior to the definition of “transportation system”: [“Strangulation” means intentionally impeding normal breathing or circulation of the blood by applying pressure to the throat or neck or by blocking the nose and mouth of another person.]
- f. Following the closing bracket of the definition of “strangulation” add a footnote with the following text: T.C.A. § 39-13-102(a)(2).
- g. At the end of the “fetus” paragraph, delete “[**only for offenses committed on or after 7/1/11:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]” and substitute the following: **[only for offenses committed on or after 7/1/11 but prior to 7/1/12:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] **[only for offenses committed on or after 7/1/12:** Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]
- h. Delete Comment 1 and substitute the following:

Aggravated assault under subsection (d) is a Class A misdemeanor. Aggravated assault under subdivision (a)(1)(A) or subsection (b) or (c) is a Class C felony. Aggravated assault under subdivision (a)(1)(B) is a Class D felony. However, if an offense under subdivision (a)(1)(A) or (B) or subsection (c) is committed against a law enforcement officer, then the maximum fine shall be fifteen thousand dollars (\$15,000). T.C.A. § 39-13-102(e)(1). If the jury finds that the defendant violated subdivision (a)(1)(A) or

(a)(1)(B) while the defendant was acting in concert with two (2) or more other persons, which must be charged in the indictment, the offense is a Class B felony or Class C felony, respectively. T.C.A. § 39-12-302.

- i. Delete Comment 2 and renumber the remaining comments.

6.03 – Reckless Endangerment

- a. Following element three on page 70, add the following new text:

[and

- (4) **Only for offenses committed on or after 1/1/12:** that the defendant discharged a firearm into an *[occupied] [unoccupied]* habitation.]
- b. Immediately following the existing definition of “Deadly Weapon” on page 70 insert the definition of “Firearm” in brackets. Insert the footnote outside the closing bracket. The definition and footnote can be found in TPI 36.09 on page 1092.
- c. Immediately following the definition of “Firearm” insert the definition of “Habitation” in brackets. Insert the footnote outside the closing bracket. The definition and footnote can be found in TPI 14.01 on pages 515-16.
- d. Immediately following the definition of “Habitation” insert the definition of “Occupied” in brackets. Insert the footnote outside the closing bracket. The definition and footnote can be found in TPI 14.01 on page 516.
- e. At the end of the “fetus” paragraph, delete “[**only for offenses committed on or after 7/1/11:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]” and substitute the following: [**only for offenses committed on or after 7/1/11 but prior to 7/1/12:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] [**only for offenses committed on or after 7/1/12:** Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]
- f. Add the following text to the end of Comment One: Reckless endangerment by discharging a firearm into a habitation is a Class C felony, unless the habitation was unoccupied at the time of the offense, in which event it is a Class D felony. T.C.A. § 39-13-103(b)(3). For offenses committed on or after 7/1/12, a mandatory fine of fifty dollars (\$50.00) over and above any other punishment must be assessed for county programs to be distributed as provided in T.C.A. § 55-10-452. T.C.A. § 39-13-103(b)(4).

6.04 – Vehicular Assault

- a. In footnote 2, delete everything after “T.C.A. § 55-10-401(a).”
- b. At the end of the “fetus” paragraph, delete “[**only for offenses committed on or after 7/1/11:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]” and substitute the following: [**only for offenses committed on or after 7/1/11 but prior to 7/1/12:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] [**only for offenses committed on or after 7/1/12:** Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]
- c. On p. 73, delete the first two paragraphs of the definition section (Those paragraphs begin with “Intoxication” and “The expression”) and substitute the following:

[Only for offenses committed on or after 1/1/11: "Intoxication" is defined as acting under the influence of *[an intoxicant] [marijuana] [a controlled substance]* **[only for offenses committed on or after 5/15/12:** a controlled substance analogue] *[a drug] [a substance affecting the central nervous system]* *[or any combination thereof]*.

The expression "under the influence of *[an intoxicant] [marijuana] [a controlled substance]* **[only for offenses committed on or after 5/15/12:** a controlled substance analogue] *[a drug] [a substance affecting the central nervous system]* *[or any combination thereof]*" covers not only all the well known and easily recognized conditions and degrees of intoxication, but also any mental or physical condition which is the result of taking *[an intoxicant] [marijuana] [a controlled substance]* **[only for offenses committed on or after 5/15/12:** a controlled substance analogue] *[a drug] [a substance affecting the central nervous system]* *[or any combination thereof]* in any form and which deprives one of that clearness of mind and control of oneself which one would otherwise possess. In this situation, it would not be necessary that the person be in such a condition as would make *[him] [her]* guilty of public drunkenness. The law merely requires that the person be under the influence of *[an intoxicant] [marijuana] [a controlled substance]* **[only for offenses committed on or after 5/15/12:** a controlled substance analogue] *[a drug] [a substance affecting the central nervous system]* *[or any combination thereof]*. The degree of intoxication must be such that it impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of *[himself] [herself]* which *[he] [she]* would otherwise possess.](Insert a footnote here)

[Only for offenses committed prior to 1/1/11: "Intoxication" is defined as acting under the influence of *[an intoxicant] [marijuana] [a narcotic drug] [a drug producing stimulating effects on the central nervous system]*.

The expression "under the influence of *[an intoxicant] [marijuana] [a narcotic drug] [a drug producing stimulating effects on the central nervous system]*" covers not only all the well known and easily recognized conditions and degrees of intoxication, but also any mental or physical condition which is the result of taking *[an intoxicant] [marijuana] [a narcotic drug] [a drug producing stimulating effects on the central nervous system]* in any form and which deprives one of that clearness of mind and control of oneself which one would otherwise possess. In this situation, it would not be necessary that the person be in such a condition as would make *[him] [her]* guilty of public drunkenness. The law merely requires that the person be under the influence of *[an intoxicant] [marijuana] [a narcotic drug] [a drug producing stimulating effects on the central nervous system]*. The degree of intoxication must be such that it impairs to any extent the driver's ability to operate a vehicle.](Insert a footnote here)

- d. For each of the two new footnotes noted above, the text will be as follows: T.C.A. § 55-10-401(a)(1).

6.06 – Criminal Exposure to [HIV] [HBV] [HCV]

- a. At the end of the "fetus" paragraph, delete "[only for offenses committed on or after 7/1/11: Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]" and substitute the following: **[only for offenses committed on or after 7/1/11 but prior to 7/1/12:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] **[only for offenses committed on or after 7/1/12:** Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]

6.08(a) – Domestic Assault

- a. In the fifth line of Comment 1 on p. 87, delete 39-13-111(c)(2) and substitute 39-13-111(c)(5).
- b. In the sixth line of Comment 1, insert a period after "\$225" and delete the remaining text of the comment. Substitute the following text for the deleted text:

As part of a defendant's alternative sentencing for a violation of this section, the sentencing judge may direct the defendant to complete a drug or alcohol treatment program or available counseling programs that address violence and control issues including, but not limited to, a batterer's intervention program that has been certified by the domestic violence state coordinating council. Completion of a non-certified batterer's intervention program shall only be ordered if no certified program is available in the sentencing county. No batterer's intervention program, certified or non-certified, shall be deemed complete until the full term of the program is complete, and a judge may not require a defendant to attend less than the full term of a program as part of a plea agreement or otherwise. The defendant's knowing failure to complete such an intervention program shall be considered a violation of the defendant's alternative sentence program and the sentencing judge may revoke the defendant's participation in such program and order execution of sentence. T.C.A. § 39-13-111(d). The defendant shall be required to terminate, upon conviction, possession of all firearms that the defendant possesses as required by T.C.A. § 36-3-325. T.C.A. § 39-13-111(c)(6).

For offenses committed on or after 7/1/12, a second conviction for bodily injury domestic assault within 10 years is punishable by a fine of not less than \$350 nor more than \$3,500, and by confinement for not less than thirty (30) days. A third or subsequent conviction for bodily injury domestic assault within 10 years is punishable by a fine of not less than \$1,100 nor more than \$5,000, and by confinement for not less than ninety (90) days. T.C.A. § 39-13-111(c).

- c. At the end of the "fetus" paragraph, delete "[**only for offenses committed on or after 7/1/11:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]" and substitute the following: [**only for offenses committed on or after 7/1/11 but prior to 7/1/12:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] [**only for offenses committed on or after 7/1/12:** Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]

7.01 – First Degree Murder – Premeditated (on or after 7/1/95)

- a. In Comment 3 on page 95, delete "See State v. Chuncy Lesolue Hollis, No. W2009-02302-CCA-R3-CD (Tenn. Crim. App., filed Jan. 25, 2011, at Jackson)" and substitute "See State v. Hollis, 342 S.W.3d 43 (Tenn. Crim. App. 2011)."
- b. At the end of the "fetus" paragraph, delete "[**only for offenses committed on or after 7/1/11:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]" and substitute the following: [**only for offenses committed on or after 7/1/11 but prior to 7/1/12:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] [**only for offenses committed on or after 7/1/12:** Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]

7.02 – First Degree Murder – Destructive Device, etc. (on or after 7/1/95)

- a. At the end of the "fetus" paragraph, delete "[**only for offenses committed on or after 7/1/11:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]" and substitute the following: [**only for offenses committed on or after 7/1/11 but prior to 7/1/12:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] [**only for offenses committed on or after 7/1/12:** Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]

7.03 – First Degree Felony Murder (on or after 7/1/95)

- a. Immediately prior to the definition of "Intentionally" on page 99, insert the following text in brackets: [When one enters into a scheme with another to commit a _____, and death ensues, *[both]* *[all]* defendants are responsible for the death regardless of who actually committed the killing and whether the killing was specifically contemplated by the other.]

- b. After the closing bracket, insert a footnote with the following text: *State v. Hinton*, 42 S.W.3d 113, 119 (Tenn. Crim. App. 2000), *perm. app. denied* (Tenn. 2001).
- c. At the end of the "fetus" paragraph, delete "[only for offenses committed on or after 7/1/11: Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]" and substitute the following: **[only for offenses committed on or after 7/1/11 but prior to 7/1/12: Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] [only for offenses committed on or after 7/1/12: Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]**

7.04(a) – First Degree Murder Punishment (on or after 7/1/95)

- a. Following aggravating circumstance 16 on page 108, add the following new text:
 [(17) The murder was committed at random and the reasons for the killing are not obvious or easily understood.] **[Only for offenses committed on or after July 1, 2011]**
- b. Add a footnote with the following text after the closing bracket of this new language: Tenn. Pub. Acts 2011, ch. 489, effective July 1, 2011.
- c. At the end of the second option under aggravating circumstance 14 on page 107, insert the following text after "on or after July 1, 1998" and inside the closing bracket: ", but prior to July 1, 2011."

7.04(b) – First Degree Murder Punishment (on or after 7/1/95)

- a. Following aggravating circumstance 16 on pages 123-24, add the following new text:
 [(17) The murder was committed at random and the reasons for the killing are not obvious or easily understood.] **[Only for offenses committed on or after July 1, 2011]**
- b. Add a footnote with the following text after the closing bracket of this new language: Tenn. Pub. Acts 2011, ch. 489, effective July 1, 2011.
- c. At the end of the second option under aggravating circumstance 14 on page 123, insert the following text after "on or after July 1, 1998" and inside the closing bracket: ", but prior to July 1, 2011."

7.05(a) – Second Degree Murder (Knowing Killing)

- a. At the end of the "fetus" paragraph, delete "[only for offenses committed on or after 7/1/11: Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]" and substitute the following: **[only for offenses committed on or after 7/1/11 but prior to 7/1/12: Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] [only for offenses committed on or after 7/1/12: Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]**

7.05(b) – Second Degree Murder (Drugs)

- a. At the end of the "fetus" paragraph, delete "[only for offenses committed on or after 7/1/11: Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]" and substitute the following: **[only for offenses committed on or after 7/1/11 but prior to 7/1/12: Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] [only for offenses committed on or after 7/1/12: Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]**

7.06 – Voluntary Manslaughter

- a. At the end of the “fetus” paragraph, delete “[**only for offenses committed on or after 7/1/11:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]” and substitute the following: [**only for offenses committed on or after 7/1/11 but prior to 7/1/12:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] [**only for offenses committed on or after 7/1/12:** Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]

7.07 – Criminally Negligent Homicide

- a. At the end of the “fetus” paragraph, delete “[**only for offenses committed on or after 7/1/11:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]” and substitute the following: [**only for offenses committed on or after 7/1/11 but prior to 7/1/12:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] [**only for offenses committed on or after 7/1/12:** Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]

7.08(a) – Vehicular Homicide (Reckless Conduct)

- a. At the end of the “fetus” paragraph, delete “[**only for offenses committed on or after 7/1/11:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]” and substitute the following: [**only for offenses committed on or after 7/1/11 but prior to 7/1/12:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] [**only for offenses committed on or after 7/1/12:** Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]

7.08(b) – Vehicular Homicide (Intoxication)

- a. At the end of the “fetus” paragraph, delete “[**only for offenses committed on or after 7/1/11:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]” and substitute the following: [**only for offenses committed on or after 7/1/11 but prior to 7/1/12:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] [**only for offenses committed on or after 7/1/12:** Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]
- b. In the last two paragraphs at the bottom of p. 150 and the continued paragraph at the top of p.151, insert the following in italics immediately following “[a controlled substance]” everywhere it appears (There will be a total of four changes): [**only for offenses committed on or after 5/15/12:** a controlled substance analogue]
- c. After the final closing bracket for each of the two paragraphs which begin with “The expression” on p. 150 and p.151, insert a footnote with the following text: T.C.A. § 55-10-401(a)(1).

7.08(c) – Vehicular Homicide (.08% Alcohol Concentration)

- a. At the end of the “fetus” paragraph, delete “[**only for offenses committed on or after 7/1/11:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]” and substitute the following: [**only for offenses committed on or after 7/1/11 but prior to 7/1/12:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] [**only for offenses committed on or after 7/1/12:** Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]

7.08(d) – Vehicular Homicide (Drag Racing)

- a. At the end of the "fetus" paragraph, delete "[only for offenses committed on or after 7/1/11: Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]" and substitute the following: **[only for offenses committed on or after 7/1/11 but prior to 7/1/12:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] **[only for offenses committed on or after 7/1/12:** Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]

7.08(e) – Vehicular Homicide (Construction Zone)

- a. At the end of the "fetus" paragraph, delete "[only for offenses committed on or after 7/1/11: Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]" and substitute the following: **[only for offenses committed on or after 7/1/11 but prior to 7/1/12:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] **[only for offenses committed on or after 7/1/12:** Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]

7.09 – Reckless Homicide

- a. At the end of the "fetus" paragraph, delete "[only for offenses committed on or after 7/1/11: Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.]" and substitute the following: **[only for offenses committed on or after 7/1/11 but prior to 7/1/12:** Any alleged victim includes a fetus if at the time of the alleged criminal act a victim was pregnant.] **[only for offenses committed on or after 7/1/12:** Any alleged victim includes a human embryo or fetus at any stage of gestation in utero.]

8.01 – Kidnapping

- a. Add the following text between the "removal or confinement is 'unlawful'" paragraph and the paragraph which defines "bodily injury":

Although the law requires no specific period of time of confinement or distance of removal,(INSERT FOOTNOTE 3) a removal or confinement "interferes substantially" with another's liberty if the time of confinement is significant or the distance of removal is considerable.(INSERT FOOTNOTE 4)

[only include if another offense was committed during the alleged kidnapping, is charged in the indictment and is submitted to the jury: To find the defendant guilty of this offense, you must also find beyond a reasonable doubt that the removal or confinement was to a greater degree than that necessary to commit the offense(s) of _____ as charged *[or included]* in count(s) _____. In making this determination, you may consider all the relevant facts and circumstances of the case, including, but not limited to, the following factors: (INSERT FOOTNOTE 5)

- (a) the nature and duration of the alleged victim's removal or confinement by the defendant;
- (b) whether the removal or confinement occurred during the commission of the separate offense;
- (c) whether the interference with the alleged victim's liberty was inherent in the nature of the separate offense;
- (d) whether the removal or confinement prevented the alleged victim from summoning assistance, although the defendant need not have succeeded in preventing the alleged victim from doing so;
- (e) whether the removal or confinement reduced the defendant's risk of detection, although the defendant need not have succeeded in this objective; and
- (f) whether the removal or confinement created a significant danger or increased the alleged victim's risk of harm independent of that posed by the separate offense.

Unless you find beyond a reasonable doubt that the alleged victim's removal or confinement exceeded that which was necessary to accomplish the alleged _____ and was not essentially incidental to it, you must find the defendant not guilty of *[especially]* *[aggravated]* *[kidnapping]* *[false imprisonment]*.(INSERT FOOTNOTE 6)

- b. The text of footnotes 3, 4, 5 and 6 will be as follows: Footnote 3: State v. White, 362 S.W.3d 559, 576 (Tenn. 2012). Footnote 4: Id. at 576-77. Footnote 5: Id. at 580-81. Footnote 6: Id. at 578-79.
- c. Delete the text of footnote 2 and substitute the following: T.C.A. § 39-13-301(16).
- d. Delete the text of footnote 7 and substitute the following: T.C.A. § 39-13-301(8).
- e. In footnote 8, delete T.C.A. § 39-13-301(2) and substitute T.C.A. § 39-13-301(3).

8.02 – Aggravated Kidnapping

- a. Add the following text between the "removal or confinement is 'unlawful'" paragraph and the paragraph which defines "bodily injury":

Although the law requires no specific period of time of confinement or distance of removal,(INSERT FOOTNOTE 3) a removal or confinement "interferes substantially" with another's liberty if the time of confinement is significant or the distance of removal is considerable.(INSERT FOOTNOTE 4)

[only include if another offense was committed during the alleged kidnapping, is charged in the indictment and is submitted to the jury: To find the defendant guilty of this offense, you must also find beyond a reasonable doubt that the removal or confinement was to a greater degree than that necessary to commit the offense(s) of _____ as charged *[or included]* in count(s) _____. In making this determination, you may consider all the relevant facts and circumstances of the case, including, but not limited to, the following factors: (INSERT FOOTNOTE 5)

- (a) the nature and duration of the alleged victim's removal or confinement by the defendant;
- (b) whether the removal or confinement occurred during the commission of the separate offense;
- (c) whether the interference with the alleged victim's liberty was inherent in the nature of the separate offense;
- (d) whether the removal or confinement prevented the alleged victim from summoning assistance, although the defendant need not have succeeded in preventing the alleged victim from doing so;
- (e) whether the removal or confinement reduced the defendant's risk of detection, although the defendant need not have succeeded in this objective; and
- (f) whether the removal or confinement created a significant danger or increased the alleged victim's risk of harm independent of that posed by the separate offense.

Unless you find beyond a reasonable doubt that the alleged victim's removal or confinement exceeded that which was necessary to accomplish the alleged _____ and was not essentially incidental to it, you must find the defendant not guilty of *[especially]* *[aggravated]* *[kidnapping]* *[false imprisonment]*.(INSERT FOOTNOTE 6)

- b. The text of footnotes 3, 4, 5 and 6 will be as follows: Footnote 3: State v. White, 362 S.W.3d 559, 576 (Tenn. 2012). Footnote 4: Id. at 576-77. Footnote 5: Id. at 580-81. Footnote 6: Id. at 578-79.
- c. If footnote 2, delete the text and substitute the following: T.C.A. § 39-13-301(16).

8.03 – Especially Aggravated Kidnapping

- a. Add the following text between the "removal or confinement is 'unlawful'" paragraph and the paragraph which defines "deadly weapon":

Although the law requires no specific period of time of confinement or distance of removal,(INSERT FOOTNOTE 3) a removal or confinement "interferes substantially" with another's liberty if the time of confinement is significant or the distance of removal is considerable.(INSERT FOOTNOTE 4)

[only include if another offense was committed during the alleged kidnapping, is charged in the indictment and is submitted to the jury: To find the defendant guilty of this offense, you must also find beyond a reasonable doubt that the removal or confinement was to a greater degree than that necessary to commit the offense(s) of _____ as charged *[or included]* in count(s) _____. In making this determination, you may consider all the relevant facts and circumstances of the case, including, but not limited to, the following factors: (INSERT FOOTNOTE 5)

- (a) the nature and duration of the alleged victim's removal or confinement by the defendant;
- (b) whether the removal or confinement occurred during the commission of the separate offense;
- (c) whether the interference with the alleged victim's liberty was inherent in the nature of the separate offense;
- (d) whether the removal or confinement prevented the alleged victim from summoning assistance, although the defendant need not have succeeded in preventing the alleged victim from doing so;
- (e) whether the removal or confinement reduced the defendant's risk of detection, although the defendant need not have succeeded in this objective; and
- (f) whether the removal or confinement created a significant danger or increased the alleged victim's risk of harm independent of that posed by the separate offense.

Unless you find beyond a reasonable doubt that the alleged victim's removal or confinement exceeded that which was necessary to accomplish the alleged _____ and was not essentially incidental to it, you must find the defendant not guilty of *[especially] [aggravated] [kidnapping] [false imprisonment]*.(INSERT FOOTNOTE 6)

- b. The text of footnotes 3, 4, 5 and 6 will be as follows: Footnote 3: State v. White, 362 S.W.3d 559, 576 (Tenn. 2012). Footnote 4: Id. at 576-77. Footnote 5: Id. at 580-81. Footnote 6: Id. at 578-79.
- c. In footnote 2, delete the text and substitute the following: T.C.A. § 39-13-301(16).

8.05 – False Imprisonment

- a. Add the following text between the "removal or confinement is 'unlawful'" paragraph and the paragraph which defines "incompetent":

Although the law requires no specific period of time of confinement or distance of removal,(INSERT FOOTNOTE 3) a removal or confinement "interferes substantially" with another's liberty if the time of confinement is significant or the distance of removal is considerable.(INSERT FOOTNOTE 4)

[only include if another offense was committed during the alleged kidnapping, is charged in the indictment and is submitted to the jury: To find the defendant guilty of this offense, you must also find beyond a reasonable doubt that the removal or confinement was to a greater degree than that necessary to commit the offense(s) of _____ as charged *[or included]* in count(s) _____. In making this determination, you may consider all the relevant facts and circumstances of the case, including, but not limited to, the following factors: (INSERT FOOTNOTE 5)

- (a) the nature and duration of the alleged victim's removal or confinement by the defendant;
- (b) whether the removal or confinement occurred during the commission of the separate offense;
- (c) whether the interference with the alleged victim's liberty was inherent in the nature of the separate offense;
- (d) whether the removal or confinement prevented the alleged victim from summoning assistance, although the defendant need not have succeeded in preventing the alleged victim from doing so;
- (e) whether the removal or confinement reduced the defendant's risk of detection, although the defendant need not have succeeded in this objective; and
- (f) whether the removal or confinement created a significant danger or increased the alleged victim's risk of harm independent of that posed by the separate offense.

Unless you find beyond a reasonable doubt that the alleged victim's removal or confinement exceeded that which was necessary to accomplish the alleged _____ and was not essentially incidental to it, you must find the defendant not guilty of *[especially] [aggravated] [kidnapping] [false imprisonment]*. (INSERT FOOTNOTE 6)

- b. The text of footnotes 3, 4, 5 and 6 will be as follows: Footnote 3: State v. White, 362 S.W.3d 559, 576 (Tenn. 2012). Footnote 4: Id. at 576-77. Footnote 5: Id. at 580-81. Footnote 6: Id. at 578-79.
- c. In footnote 2, delete the text and substitute the following: T.C.A. § 39-13-301(16).

8.06 – Involuntary Labor Servitude

- a. In (A) of the definition of "Forced labor or services" at the top of p.192, delete "serious harm" and substitute the following: physical **[for offenses committed on or after 7/1/12: serious bodily]** harm
- b. In that same definition, delete the "or" after "Blackmail;" in (E), delete the period after "person" in (F), substitute a semi-colon for the period, and insert the following:

[for offenses committed on or after 7/1/12:

- (G) Facilitating or controlling the person's access to an addictive controlled substance; or
- (H) Controlling the person's movements through threats or violence.]

- c. Move footnote 3 from the end of (F) to the end of (H).
- d. In element 3 on p.191, delete the closing bracket at the end of element (3)(c), substitute a semi-colon for the period which appears immediately prior to that bracket, and insert the following:

or

- (d) **for offenses committed on or after 7/1/12:** that the victim was under age thirteen (13).]
- e. Move footnote 1 from the end of element (3)(c) to the end of the second paragraph of the instruction, which ends with "essential elements:" and change the text of the footnote to the following: T.C.A. §§ 39-13-307(a) and (d).
- f. In lines four and five of Comment One, delete "or" before "the defendant," add a comma after "episode" and add "or the victim was under age thirteen (13)."

- g. Delete the text of footnotes 3, 4, 5, 6, 7, and 10, and substitute the following text, respectively: T.C.A. § 39-13-301(7), T.C.A. § 39-13-301(2), T.C.A. § 39-13-301(9), T.C.A. § 39-13-301(10), T.C.A. § 39-13-301(12), T.C.A. § 39-13-301(13).

8.07 – Trafficking for Forced Labor or Services

- a. Delete the text of footnotes 3, 4, 5, 6, 7, and 8, and substitute the following text, respectively: T.C.A. § 39-13-301(7), T.C.A. § 39-13-301(2), T.C.A. § 39-13-301(9), T.C.A. § 39-13-301(10), T.C.A. § 39-13-301(12), T.C.A. § 39-13-301(13).

8.08 – Trafficking for Sexual Servitude (Only for offenses committed prior to 7/1/12)

- a. Renumber this instruction as 8.08(a) and insert the following in the title of the instruction: (Only for offenses committed prior to 7/1/12)
- b. Delete the text of footnote 2 and substitute the following: T.C.A. § 39-13-301(15).
- c. In footnote 3, delete 39-13-301(2) and substitute 39-13-301(3).
- d. Delete the text of footnotes 4, 5, 6, 7, and 8, and substitute the following text, respectively: T.C.A. § 39-13-301(5), T.C.A. § 39-13-301(10), T.C.A. § 39-13-301(12), T.C.A. § 39-13-301(13), T.C.A. § 39-13-301(14).
- e. Delete the text of (D) in the definition of “Coercion” on p.199 and substitute the following language: Providing a drug, substance, controlled substance analogue or immediate precursor in Schedules I through VII of §§ 39-17-403 — 39-17-416 to a person. [] is a *[drug]* *[substance]* *[controlled substance analogue]* *[immediate precursor]* in Schedules I through VII of §§ 39-17-403 — 39-17-416.

8.08(b) – Trafficking for Commercial Sex Act

- a. New instruction

9.01 – Robbery

- a. Following element 5 on p. 203, insert the following text

[and

(6) **only for offenses committed on or after 7/1/12:** that the defendant committed the offense while acting in concert with two (2) or more other persons.]

- b. Insert the following definition immediately prior to the definition of “obtain” on p. 203: [“Acting in concert” means such conduct that would make one criminally responsible for committing or facilitating the offense.]FN [If this definition is charged, the trial judge should utilize T.P.I. – Crim. 3.01, Criminal Responsibility and T.P.I. – Crim. 3.02, Facilitation.] THE FOOTNOTE TEXT WILL BE AS FOLLOWS: T.C.A. § 39-12-301(1).
- c. Add the following to the end of Comment 1: If the jury finds this offense was committed while the defendant was acting in concert with two (2) or more other persons, which must be charged in the indictment, it is a Class B felony. T.C.A. § 39-12-302.

10.05(b) – Statutory Rape (on or after 7/1/06)

- a. In Comment One, insert the following text after the first sentence and prior to the statutory citation: For offenses committed on or after 7/1/12, the trial judge may also order, after taking into

account the facts and circumstances surrounding the offense, including the offense for which the person was originally charged and whether the conviction was the result of a plea bargain agreement, that the person be required to register as a sexual offender.

10.05(d) – Statutory Rape by an Authority Figure

- a. New instruction

10.08 – Promoting Prostitution

- a. In footnote 9 on page 270, delete T.C.A. § 39-13-512(5) and substitute T.C.A. § 39-13-512(6).
- b. In footnote 13 on page 270, delete T.C.A. § 39-13-512(6) and substitute T.C.A. § 39-13-512(7).

10.08(a) – Promoting Prostitution of a [Minor] [Person with an Intellectual Disability]

- a. New instruction.

10.09 – Prostitution

- a. In footnote 5 on page 273, delete T.C.A. § 39-13-512(5) and substitute T.C.A. § 39-13-512(6).
- b. In footnote 8 on page 274, delete T.C.A. § 39-13-512(6) and substitute T.C.A. § 39-13-512(7).

10.10 – Patronizing Prostitution

- a. In Parts A, B and C on pages 276-77, delete the bracket following the last element and insert the following new element (it will be element 3 for Part A and element 4 for Parts B and C):

[and

(insert element # here) **Only for offenses committed on or after 6/1/11:** that the person *[was younger than eighteen (18) years of age] [had an intellectual disability].]*

- b. Add the following text to the end of Comment One: Patronizing prostitution from a person who is younger than eighteen (18) years of age or has an intellectual disability is a Class E felony. T.C.A. § 39-13-514(b)(4)(A).
- c. In footnote 5 on page 278, delete T.C.A. § 39-13-512(5) and substitute T.C.A. § 39-13-512(6).
- d. In footnote 8 on page 278, delete T.C.A. § 39-13-512(6) and substitute T.C.A. § 39-13-512(7).

10.11 – Indecent Exposure

- a. Delete the text of footnote 1 and substitute the following: T.C.A. § 39-13-511(a).
- b. In Part A, delete the second closing bracket in element (4) on p. 281 and add the following language after element (4):

[only for offenses committed on or after 7/1/12: and

(5) that the offense occurred on the property of a *[public school] [private or parochial school] [licensed day care center] [child care facility]* during a time at which a child or children were likely to be present on the property.]] (INSERT A FOOTNOTE WITH THE FOLLOWING TEXT: T.C.A. § 39-13-511(b)(4).)

- c. Renumber the remaining footnotes accordingly.
- d. Delete the two current comments and substitute the following as Comment One: "Indecent exposure" is a Class B misdemeanor. If the defendant is eighteen (18) years of age or older and the victim is under thirteen (13) years of age, it Class A misdemeanor. If the defendant is eighteen (18) years of age or older, the victim is under thirteen (13) years of age, and the defendant has any combination of two (2) or more prior convictions for this offense or public indecency, the offense is a Class E felony. For offenses committed on or after 5/21/12, if the defendant is eighteen (18) years of age or older, the victim is under thirteen (13) years of age, and the defendant is a sexual offender, violent sexual offender, or violent juvenile sexual offender as defined in T.C.A. § 40-39-202, the offense is a Class E felony. For offenses committed on or after 7/1/12, if the defendant is eighteen (18) years of age or older, the victim is under thirteen (13) years of age, and the offense occurred on the property of any public school, private or parochial school, licensed day care center or other child care facility during a time at which a child or children were likely to be present on the property, the offense is a Class E felony. T.C.A. § 39-13-511(b).

10.15 – Public Indecency

- a. Add the following to the title of this instruction: (only for offenses committed prior to 7/1/12)

10.15(a) – Public Indecency: Supplemental instruction number one

- a. Add the following to the title of this instruction: (only for offenses committed prior to 7/1/12)

10.15(b) – Public Indecency (for offenses committed on or after 7/1/12)

- a. New instruction

10.23 – Soliciting Sexual Exploitation of a Minor

- a. New instruction

11.01 – Theft of Property

- a. In the last paragraph of the instruction, delete 11.03 and substitute 11.03(a).
- b. In Comment 1, delete the "and" which follows (D), delete (E) in its entirety, delete the citation to T.C.A. § 39-14-105, and substitute the following:

(E) a Class B felony if the value of the property or services obtained is \$60,000 or more [**only for offenses committed on or after 7/1/12:** , but less than two hundred fifty thousand dollars (\$250,000); and

(F) a Class A felony if the value of the property or services obtained is two hundred fifty thousand (\$250,000) or more.]

T.C.A. § 39-14-105.

- c. Insert a new comment after the existing comments. The new comment will have the following text: Venue in a prosecution for this offense shall be in the county where one (1) or more elements of the offense occurred, or in the county where an act of solicitation, inducement, offer, acceptance, delivery, storage, or financial transaction occurred involving the property, service or article of the victim.

11.02 – Theft of Services

- a. In the last paragraph of the instruction, delete 11.03 and substitute 11.03(a).
- b. Insert a new comment after the existing comments. The new comment will have the following text: Venue in a prosecution for this offense shall be in the county where one (1) or more elements of the offense occurred, or in the county where an act of solicitation, inducement, offer, acceptance, delivery, storage, or financial transaction occurred involving the property, service or article of the victim.

11.03 – Fixing Value

- a. Renumber this instruction as 11.03(a).
- b. Delete the text of item 5 on p. 365 and substitute the following text:
 5. Sixty thousand dollars (\$60,000) or more [**only for offenses committed on or after 7/1/12:**, but less than two hundred fifty thousand dollars (\$250,000);
 6. Two hundred fifty thousand dollars (\$250,000) or more.] (FN - Move footnote 5 from its current location to this location)
- c. Following item (D) on p. 364, insert the following:

[(E) **For offenses committed on or after 7/1/12:** The monetary value of property from multiple criminal acts which are charged in a single count of theft of property shall be aggregated to establish value.] (INSERT A FOOTNOTE HERE WITH THE FOLLOWING TEXT: T.C.A. § 39-14-105(b)(2).)

11.03(b) – Fixing Apparent Value

- a. New instruction

11.05 – Forgery

- a. Delete the last paragraph which appears prior to the comments and substitute the following: [The trial judge should now instruct the jury with respect to fixing apparent value. See T.P.I. – Crim. 11.03(b) – Fixing apparent value.]
- b. Delete Comment 2 and substitute the following: Forgery is graded substantially as theft of property; however, in no event shall it be less than a Class E felony. T.C.A. § 39-14-114(c). See a/s/o the comment to T.P.I. – 11.01, Theft of Property.
- c. Insert a new comment at the end of the existing comments. The new comment will have the following text: Venue in a prosecution for this offense shall be in the county where one (1) or more elements of the offense occurred, or in the county where an act of solicitation, inducement, offer, acceptance, delivery, storage, or financial transaction occurred involving the property, service or article of the victim.

11.06 – Criminal Simulation

- a. Delete the last paragraph which appears prior to the comments and substitute the following: [The trial judge should now instruct the jury with respect to fixing apparent value. See T.P.I. – Crim. 11.03(b) – Fixing apparent value.]
- b. Insert a new comment at the end of the existing comments. The new comment will have the following text: Venue in a prosecution for this offense shall be in the county where one (1) or

more elements of the offense occurred, or in the county where an act of solicitation, inducement, offer, acceptance, delivery, storage, or financial transaction occurred involving the property, service or article of the victim.

11.09 – Worthless Checks

- a. Insert a new comment at the end of the existing comments. The new comment will have the following text: Venue in a prosecution for this offense shall be in the county where one (1) or more elements of the offense occurred, or in the county where an act of solicitation, inducement, offer, acceptance, delivery, storage, or financial transaction occurred involving the property, service or article of the victim.
- b. In the middle of p.382, delete the language of element 5 and substitute the following:
5. \$60,000 or more [**only for offenses committed on or after 7/1/12:** , but less than two hundred fifty thousand dollars (\$250,000);
6. two hundred fifty thousand dollars (\$250,000) or more.]

11.10 – False or Fraudulent Insurance Claim

- a. At the end of the instruction, delete 11.03 and substitute 11.03(a).
- b. Insert a new comment after the existing comment. The new comment will have the following text: Venue in a prosecution for this offense shall be in the county where one (1) or more elements of the offense occurred, or in the county where an act of solicitation, inducement, offer, acceptance, delivery, storage, or financial transaction occurred involving the property, service or article of the victim.

11.13 – Recorded Devices, etc. (prior to 7/1/09)

- a. At the end of the instruction, delete 11.03 and substitute 11.03(a).
- b. Insert a new comment after the existing comments. The new comment will have the following text: Venue in a prosecution for this offense shall be in the county where one (1) or more elements of the offense occurred, or in the county where an act of solicitation, inducement, offer, acceptance, delivery, storage, or financial transaction occurred involving the property, service or article of the victim.

11.17 – Theft of Merchandise

- a. Add the following as a new paragraph at the end of the existing instruction: [The trial judge should now instruct the jury with respect to fixing the value of the merchandise. See T.P.I. – Crim. 11.03(a), Fixing value.]
- b. Insert a new comment after the existing comments. The new comment will have the following text: Venue in a prosecution for this offense shall be in the county where one (1) or more elements of the offense occurred, or in the county where an act of solicitation, inducement, offer, acceptance, delivery, storage, or financial transaction occurred involving the property, service or article of the victim.

11.18 – Illegal Possession of / Fraudulent Use of Credit/Debit Card

- a. Add the following as a new paragraph at the end of the existing instruction: [The trial judge should now instruct the jury with respect to fixing the value of the property, credit, goods or services obtained. See T.P.I. – Crim. 11.03(a), Fixing value.]

- b. Insert a new comment after the existing comments. The new comment will have the following text: Venue in a prosecution for this offense shall be in the county where one (1) or more elements of the offense occurred, or in the county where an act of solicitation, inducement, offer, acceptance, delivery, storage, or financial transaction occurred involving the property, service or article of the victim.

11.33 – Theft of Telecommunications Services (repealed 7/1/04)

- a. Add the following as a new paragraph at the end of the existing instruction: [The trial judge should now instruct the jury with respect to fixing the value of the services obtained. See T.P.I. – Crim. 11.03(a), Fixing value.]
- b. Insert a new comment after the existing comments. The new comment will have the following text: Venue in a prosecution for this offense shall be in the county where one (1) or more elements of the offense occurred, or in the county where an act of solicitation, inducement, offer, acceptance, delivery, storage, or financial transaction occurred involving the property, service or article of the victim.
- c. Delete the text of Comment One and substitute the following: A violation which results in the unlawful taking or acquisition of a telecommunication service is punishable as theft and graded in accordance with T.C.A. § 39-14-105. T.C.A. § 39-14-149(d)(1). See the comment to T.P.I. – 11.01, Theft of Property.

11.33(a) – Communication Theft

- a. In the last paragraph of the instruction, delete 11.03 and substitute 11.03(a). Also, insert a comma after 11.03(a) and add the words “Fixing value” prior to the existing period and closing bracket.
- b. Insert a new comment after the existing comments. The new comment will have the following text: Venue in a prosecution for this offense shall be in the county where one (1) or more elements of the offense occurred, or in the county where an act of solicitation, inducement, offer, acceptance, delivery, storage, or financial transaction occurred involving the property, service or article of the victim.

11.36 – Money Laundering

- a. On p. 446, delete the definition of “‘Uses’ and ‘conducts’” and substitute the following:

“Use” and “conduct” means to initiate, conclude, participate, negotiate, transport, conceal, or to aid or abet in such acts. (FN 7) **[only for offenses committed on or after 7/1/12]**

or

“Uses” and “conducts” means initiating, concluding, participating, negotiating or aiding or abetting in such initiating, concluding, participating or negotiating, or any act of concealment. (FN 8) **[only for offenses committed prior to 7/1/12]**

- b. The text of footnote 7 and footnote 8, whose placement is identified above, will be as follows: “T.C.A. § 39-14-902(7). Refer to T.C.A. § 39-11-402 and T.P.I. – Crim. 3.01, Criminal responsibility for conduct of another. The trial judge may want to charge former T.P.I. – Crim. 3.02, Aiding and abetting. See Comment 5.”
- c. The text of the new Comment 5 will be the same as the text which currently appears in Comment 4 of TPI 10.01 (Agg Rape) on p. 223 of the book.

- d. Renumber the remaining footnotes

12.02 – Intentional Killing of Animal

- a. In the last paragraph of the instruction, delete 11.03 and substitute 11.03(a).

14.02 – Aggravated Burglary

- a. In Parts A, B and C, delete the bracket that follows element 4 and insert the following text after “[See footnote 2 below]”:

[and

(5) **only for offenses committed on or after 7/1/12:** that the defendant committed the offense while acting in concert with two (2) or more other persons.]]

- b. In Part A on p.518, move “[See footnote 2 below.]” to the same line as element 4.
- c. In Part B, move “[See footnote 2 below.]” to the same line as element 4 and substitute “footnote 3” for “footnote 2.”
- d. In Part C, move “[See footnote 2 below.]” to the same line as element 4 and substitute “footnote 4” for “footnote 2.”
- e. Insert the following definition immediately prior to the definition of “Habitation”: [“Acting in concert” means such conduct that would make one criminally responsible for committing or facilitating the offense.]FN [If this definition is charged, the trial judge should utilize T.P.I. – Crim. 3.01, Criminal Responsibility and T.P.I. – Crim. 3.02, Facilitation.] THE FOOTNOTE TEXT WILL BE AS FOLLOWS: T.C.A. § 39-12-301(1).
- f. Insert the following at the end of Comment 1: If the jury finds this offense was committed while the defendant was acting in concert with two (2) or more other persons, which must be charged in the indictment, it is a Class B felony. T.C.A. § 39-12-302.

14.04 – Vandalism

- a. In the last paragraph of the instruction, delete 11.03 and substitute 11.03(a).
- b. Insert a new comment after the existing comments. The new comment will have the following text: Venue in a prosecution for this offense shall be in the county where one (1) or more elements of the offense occurred, or in the county where an act of solicitation, inducement, offer, acceptance, delivery, storage, or financial transaction occurred involving the property, service or article of the victim.

14.11 – Destruction or Interference with Property Utilized by Railroads

- a. Add the following to the end of this instruction: [The trial judge should now instruct the jury with respect to fixing the value of the property. See T.P.I. – Crim. 11.03(a), Fixing value.]

16.01 – Accessing Computer to Obtain by False Pretenses

- a. In the last paragraph of the instruction, delete 11.03 and substitute 11.03(a).

16.02 – Accessing, Altering, or Contaminating Computer, etc.

- a. In the last paragraph of the instruction, delete 11.03 and substitute 11.03(a).

16.03 – Receiving, Concealing, Using or Aiding, etc.

- a. In the last paragraph of the instruction, delete 11.03 and substitute 11.03(a).

21.01(b) – Aggravated Child [Abuse] [Neglect or Endangerment] (7/1/05-7/1/09)

- a. In the definition of “controlled substance” on p. 619, delete “VI” each time it appears and substitute “VII” for it. Similarly, delete “39-17-415” each time it appears and substitute “39-17-416” for it.

21.01(c) – Aggravated Child [Abuse] [Neglect] (on or after 7/1/09)

- a. In element 2(b) of Part A and Part B on pp. 622 and 623, insert the following between “[controlled substance]” and “was used”: **[only for offenses committed on or after 5/15/12: controlled substance analogue]**
- b. Delete the definition of “controlled substance” on p. 624 and substitute the following: [“Controlled substance” means a drug, substance, or immediate precursor in Schedules I through VII of §§ 39-17-403 — 39-17-416. [] is a *[drug] [substance] [immediate precursor]* in Schedules I through VII of §§ 39-17-403 — 39-17-416.]
- c. Add the following immediately below element (3) at the top of page 624, and center it on the page: [[] is a controlled substance analogue.](FN)
- d. The text of the footnote which appears after this new language will be as follows: The trial judge should include this bracketed language if a controlled substance analogue is alleged in an element and it is one listed in T.C.A. § 39-17-452 as an analogue. If it is not listed, it will be a jury question, and the trial judge should utilize 31.20, Controlled Substance Analogue.

21.03(b) – Aggravated Parental or Custodial Child Endangerment

- a. In element 4(b) on p. 636, insert the following between “[controlled substance]” and “was used”: **[only for offenses committed on or after 5/15/12: controlled substance analogue]**
- b. Delete the definition of “controlled substance” on p. 624 and substitute the following: [“Controlled substance” means a drug, substance, or immediate precursor in Schedules I through VII of §§ 39-17-403 — 39-17-416. [] is a *[drug] [substance] [immediate precursor]* in Schedules I through VII of §§ 39-17-403 — 39-17-416.]
- c. Add the following immediately below element (4)(c) at the bottom of page 636, and center it on the page: [[] is a controlled substance analogue.](FN)
- d. The text of the footnote which appears after this new language will be as follows: The trial judge should include this bracketed language if a controlled substance analogue is alleged in an element and it is one listed in T.C.A. § 39-17-452 as an analogue. If it is not listed, it will be a jury question, and the trial judge should utilize 31.20, Controlled Substance Analogue.

21.05 – Distribution of Tobacco Products to Minor

- a. In footnote 3, delete 39-17-1503(6) and substitute 39-17-1503(10).

23.01 – Contraband in Penal Institutions

- a. In element 1 of Part A on p. 674 AND in element 1 of Part B on p. 675, delete “[controlled substance found in Chapter 17, Part 4 of this Title]” and substitute “[controlled substance] **[only for offenses committed on or after 5/15/12: controlled substance analogue]**”

- b. Add the following immediately below element (3) on p.675, and center it on the page:

[[_____] is a controlled substance analogue.](FN)
- c. The text of the footnote which appears after this new language will be as follows: The trial judge should include this bracketed language if a controlled substance analogue is alleged in an element and it is one listed in T.C.A. § 39-17-452 as an analogue. If it is not listed, it will be a jury question, and the trial judge should utilize 31.20, Controlled Substance Analogue.
- d. Insert the following immediately below "[[_____] is a controlled substance analogue.]":
["Controlled substance" means a drug, substance, or immediate precursor in Schedules I through VII of §§ 39-17-403 — 39-17-416. [_____] is a *[drug]* *[substance]* *[immediate precursor]* in Schedules I through VII of §§ 39-17-403 — 39-17-416.](FN)
- e. The text of the footnote will be as follows: T.C.A. § 39-17-402(4).

25.01 – Official Misconduct

- a. Add the following text immediately prior to the definition of "Intentionally" on p.688:

["Received any benefit not otherwise authorized by law" includes, but is not limited to, a public servant who:

- (A) Purchases real property or otherwise obtains an option to purchase real property with intent to make a profit if the public servant knows that such real property may be purchased by a governmental entity and such information is not public knowledge; or
- (B) Acquires nonpublic information derived from such person's position as a public servant or gained from the performance of such person's official duties as a public servant and knowingly acts on such nonpublic information to acquire, or obtain an option to acquire, or liquidate, tangible or intangible personal property with intent to make a profit.]
- b. Following the closing bracket at the end of this new text, insert a footnote with the following text:
"T.C.A. § 39-16-402(c)(1)." Renumber the remaining footnotes.
- c. Delete the text of current footnote 8 (which will be footnote 9 when renumbered) and substitute the following: T.C.A. § 39-16-402(d).

30.07 – Harassment

- a. On p. 827, delete "[Part D:" and substitute the following: **[Part D *[Only for offenses committed prior to 7/1/12]***:
- b. Following element 4 of Part D on p.828, insert the following:

[Part E *[Only for offenses committed on or after 7/1/12]*:

- (1) that the defendant communicated with another person or transmitted or displayed an image *[by telephone]* *[in writing]* *[by electronic communication, including but not limited to, text messaging, facsimile transmissions, electronic mail or internet services]* without legitimate purpose, with the intent that the image would be viewed by the victim;
and
- (2) that this act was done with the malicious intent that the communication would be a threat of harm to the victim;
and
- (3) that a reasonable person would perceive the communication to be a threat of harm.]

30.08 – Public Intoxication

- a. In element 1 on p. 829, insert the following in italics after “[a controlled substance]” but before the semi-colon: **[only for offenses committed on or after 5/15/12: a controlled substance analogue]**
- b. In element 4, move “[_____] is [an intoxicating substance] [a controlled substance].” out of that element, insert it below element (4) on p. 829, center it on the page, and put it in brackets so it appears as follows: “[_____] is [an intoxicating substance] [a controlled substance].”
- c. Add the following immediately prior to “[_____] is [an intoxicating substance] [a controlled substance].” and center it on the page: “[_____] is a controlled substance analogue.”(FN)
- d. The text of the footnote which appears after this new language will be as follows: The trial judge should include this bracketed language if a controlled substance analogue is alleged in an element and it is one listed in T.C.A. § 39-17-452 as an analogue. If it is not listed, it will be a jury question, and the trial judge should utilized 31.20, Controlled Substance Analogue.

30.15 – Terrorism

- a. Add the following, in brackets, at the end of the instruction: [It is not a defense that the defendant felt justified in committing these acts for religious reasons.]
- b. After the closing bracket, add a footnote with the following text: T.C.A. § 39-13-809.

30.16 – Violation of Weapons of Mass Destruction Law

- a. Add the following, in brackets, after the definition of “recklessly” on page 867: [It is not a defense that the defendant felt justified in committing these acts for religious reasons.]
- b. After the closing bracket, add a footnote with the following text: T.C.A. § 39-13-809.

30.17 – Providing Support or Resources for Terrorism

- a. Renumber as 30.17(a) and add “(for offenses committed prior to 7/1/11)” to the title of the instruction.
- b. Add the following, in brackets, after the definition of “recklessly” on page 870: [It is not a defense that the defendant felt justified in committing these acts for religious reasons.]
- c. After the closing bracket, add a footnote with the following text: T.C.A. § 39-13-809.

30.17(b) – Providing Support or Resources for Terrorism

- a. New instruction

30.18 – Distribution or Delivery of Substance as Act of Terrorism or Hoax

- a. Add the following, in brackets, at the end of the instruction: [It is not a defense that the defendant felt justified in committing these acts for religious reasons.]
- b. After the closing bracket, add a footnote with the following text: T.C.A. § 39-13-809.

31.01 – Controlled Substances: Manufacture, Delivery or Sale

- a. Delete the text of footnote 5 and substitute the following: “Controlled substance” means a drug, substance, or immediate precursor in Schedules I through VII of §§ 39-17-403 – 39-17-416. T.C.A. § 39-17-402(4).

31.03 – Unlawful Drug Paraphernalia Uses and Activities

- a. Delete the text of footnote 5 and substitute the following: “Controlled substance” means a drug, substance, or immediate precursor in Schedules I through VII of §§ 39-17-403 – 39-17-416. T.C.A. § 39-17-402(4).
- b. In elements (1)(a) and (1)(b) in Part A on p. 884 and in elements (2)(a) and (2)(b) of Part B on p. 885, delete “controlled substance” and substitute the following in italics: [controlled substance] [controlled substance analogue]
- c. Add brackets around the first line of the definition section on p. 886 so it appears as follows (the footnote will remain outside the closing bracket): [[_____] is a Schedule [_____] controlled substance.]
- d. Add the following as a new line in the definition section. It will appear immediately prior to the definition of “drug paraphernalia”: [[_____] is a controlled substance analogue.](FN)
- e. The text of the footnote which appears after this new language will be as follows: The trial judge should include this bracketed language if a controlled substance analogue is alleged in an element and it is one listed in T.C.A. § 39-17-452 as an analogue. If it is not listed, it will be a jury question, and the trial judge should utilized 31.20, Controlled Substance Analogue.

31.04 – Controlled Substances, etc.

- a. Immediately prior to the definition of “knowingly” on page 891, insert the inference which appears at the top of page 894 in 31.05. As in 31.05, when this language is inserted into 31.04 it should be in brackets and it should include the four footnotes.
- b. Between the last period and the closing bracket of this new text, add the following text: SEE COMMENT TWO.
- c. Add a new Comment Two with the following text:
 2. Even though casual exchange is not a lesser included offense of possession with intent to sell or deliver, *State v. Nelson*, 275 S.W.3d 851, 865 (Tenn. Crim. App. 2008) (citing *State v. Timothy Wayne Grimes*, No. M2001-01460-CCA-R3-CD, 2002 WL 31373472, at *6 (Tenn. Crim. App. Oct. 16, 2002)), our courts have held that if there is evidence from which a jury could reasonably infer that there was an exchange, the inference must be charged. *Grimes*, at *6.
- d. Delete the text of footnote 5 and substitute the following: “Controlled substance” means a drug, substance, or immediate precursor in Schedules I through VII of §§ 39-17-403 – 39-17-416. T.C.A. § 39-17-402(4).
- e. In the second line of the definition of “knowingly” on p.891, delete “the circumstance” and substitute “circumstances”
- f. In the first line of the instruction, delete the comma which appears after “possesses”

31.05 – Simple Possession or Casual Exchange

- a. Delete the text of footnote 2 and substitute the following: “Controlled substance” means a drug, substance, or immediate precursor in Schedules I through VII of §§ 39-17-403 – 39-17-416. T.C.A. § 39-17-402(4).

31.06 – Unlawful [Distribution] [Dispensing] of a Controlled Substance

- a. Delete the text of footnote 2 and substitute the following: “Controlled substance” means a drug, substance, or immediate precursor in Schedules I through VII of §§ 39-17-403 – 39-17-416. T.C.A. § 39-17-402(4).

31.12 – Unlawful Possession of Anhydrous Ammonia (prior to 3/30/05)

- a. Delete the text of footnote 2 and substitute the following: “Controlled substance” means a drug, substance, or immediate precursor in Schedules I through VII of §§ 39-17-403 – 39-17-416. T.C.A. § 39-17-402(4).

31.14 – Possession of Substance, etc. (on or after 7/1/04 but prior to 3/30/05)

- a. Delete the text of footnote 2 and substitute the following: “Controlled substance” means a drug, substance, or immediate precursor in Schedules I through VII of §§ 39-17-403 – 39-17-416. T.C.A. § 39-17-402(4).

31.16 – Use or Possession of False Drug Test Device

- a. Delete the text of footnote 2 and substitute the following: “Controlled substance” means a drug, substance, or immediate precursor in Schedules I through VII of §§ 39-17-403 – 39-17-416. T.C.A. § 39-17-402(4).
- b. In the definition of “drug test” on p. 928, insert the following immediately prior to the period: [only for offenses committed on or after 5/15/12: or a controlled substance analogue]

31.17 – Controlled Substance Analogues: Manufacture, Delivery, Dispensing or Sale

- a. New instruction

31.18 – Controlled Substance Analogues: Possession with Intent to Manufacture, Deliver, Dispense or Sell

- a. New instruction

31.19 – Simple Possession or Casual Exchange of a Controlled Substance Analogue

- a. New instruction

31.20 – Controlled Substance Analogue

- a. New instruction

34.01 – Producing, Importing, etc. Obscene Material or Exhibition

- a. In footnote 9, delete 39-17-901(2) and substitute 39-17-1002(1).

34.02 – Using Minors to Import, etc. Obscene Material or Exhibition

- a. In footnote 10, delete 39-17-901(2) and substitute 39-17-1002(1).
- b. Add a new comment with the following text: If there is a question as to the meaning of “contemporary community standards,” the trial judge may wish to refer to the case law on this topic set out in Comment 3 of T.P.I. – Crim. 34.01.

34.03(a) – Sexual Exploitation of a Minor (prior to 7/1/05)

- a. Delete elements 1 and 2 on page 991 and substitute the following:
 - (1) that the defendant possessed material that includes a minor engaged in *[sexual activity]* *[simulated sexual activity that was patently offensive]*;
and
 - (2) that the defendant did so knowingly.
- b. In subsection (C) of the definition of “sexual activity” on page 993, substitute “contact” for “conduct” and delete the commas which appear around “or touching of”.
- c. Following the definition of “community” on page 993, insert the definition, in brackets, of “simulated sexual activity” as it appears on page 1006. Insert the footnote as well, including the footnote citation change discussed in the summary for 34.05 below.
- d. Add a new comment with the following text: If there is a question as to the meaning of “contemporary community standards,” the trial judge may wish to refer to the case law on this topic set out in Comment 3 of T.P.I. – Crim. 34.01.

34.03(b) – Sexual Exploitation of a Minor (offenses on or after 7/1/05)

- a. In element 1 on page 994, delete “is patently offensive” and substitute “was patently offensive.”
- b. In subsection (C) of the definition of “sexual activity” on page 996, substitute “contact” for “conduct” and delete the commas which appear around “or touching of”.
- c. Following the definition of “community” on page 996, insert the definition, in brackets, of “simulated sexual activity” as it appears on page 1006. Insert the footnote as well, including the footnote citation change discussed in the summary for 34.05 below.
- d. Add a new comment with the following text: If there is a question as to the meaning of “contemporary community standards,” the trial judge may wish to refer to the case law on this topic set out in Comment 3 of T.P.I. – Crim. 34.01.

34.04 – Agg Sexual Exploitation of a Minor

- a. Delete the elements of the offense on page 998 and substitute the following:
 - (1) that the defendant did *[promote]* *[sell]* *[distribute]* *[transport]* *[purchase]* *[exchange]* *[possess with the intent to promote, sell, distribute, transport, purchase or exchange]* *[obscene]* material, which includes a minor engaged in *[sexual activity]* *[simulated sexual activity that was patently offensive]*;
and
 - (2) that the defendant did so knowingly.
- b. In subsection (C) of the definition of “sexual activity” on page 1001, substitute “contact” for “conduct” and delete the commas which appear around “or touching of”.

- c. Add a new comment with the following text: If there is a question as to the meaning of "contemporary community standards," the trial judge may wish to refer to the case law on this topic set out in Comment 3 of T.P.I. – Crim. 34.01.
- d. Following the definition of "community" on page 999, insert the definition, in brackets, of "simulated sexual activity" as it appears on page 1006. Insert the footnote as well, including the footnote citation change discussed in the summary for 34.05 below.

34.05 – Esp Agg Sexual Exploitation of Minor

- a. In subsection (C) of the definition of "sexual activity" on page 1005, substitute "contact" for "conduct" and delete the commas which appear around "or touching of".
- b. In the definition for "community" on page 1006, the first footnote is 11 and the second is 13 instead of 12. The footnote in the "simulated sexual activity/ultimate sexual acts" definition is then 12 and the footnote for the definition of "fellatio" is 13. These errors need to be corrected.
- c. Delete the text of the footnote which appears after the "simulated sexual activity/ultimate sexual acts" definition on page 1006 and substitute the following: T.C.A. § 39-17-901(14)(A).
- d. Delete the elements of this offense on page 1003 and substitute the following:
 - (1) that the defendant did [*promote*] [*employ*] [*use*] [*assist*] [*transport*] [*permit*] a minor to participate in the [*performance*] [*production*] of material which includes the minor engaging in [*sexual activity*] [*simulated sexual activity that was patently offensive*];
 - and
 - (2) that the defendant did so knowingly.
- e. Add a new comment with the following text: If there is a question as to the meaning of "contemporary community standards," the trial judge may wish to refer to the case law on this topic set out in Comment 3 of T.P.I. – Crim. 34.01.

34.09 – Exploitation of a Minor [By Electronic Means]

- a. New instruction

36.02 – Carrying Weapons During Judicial Proceedings

- a. Immediately prior to the last paragraph on page 1037, add the following new paragraph in brackets. Following the closing bracket, add a footnote with the following text: T.C.A. § 39-17-1306(c)(3).

[It is an exception to this offense that the defendant was in the actual discharge of official duties as a judge, was authorized to carry a handgun pursuant to § 39-17-1351, had successfully completed sixteen (16) hours of POST court security training, had successfully completed eight (8) hours of POST firearm training on an annual basis, and was vested with judicial powers under § 16-1-101.]

36.05(a) – Unlawful Possession, etc. (on or after 7/1/08)

- a. Delete the period at the end of element 3 on p.1060, substitute a semi-colon, and add the following language as the text of a new element 4:

[and

(4) that the felony *[involved the use or attempted use of [force] [violence] [a deadly weapon]] [was a drug offense].*

- b. Delete the text of Comment 1 and substitute the following: Unlawful possession of a firearm by a defendant with a prior felony conviction involving the use or attempted use of force, violence, or a deadly weapon is a Class C felony. T.C.A. §39-17-1307(b)(2). Unlawful possession of a firearm by a defendant with a prior felony drug conviction is a Class D felony. T.C.A. §39-17-1307(b)(3). This offense is a Class E felony if committed prior to 7/1/12.

36.06(c) – Unlawful [Possession] [Employment] of a Firearm, etc.

- a. Add the following to the end of Comment 1: Upon a second or subsequent conviction for this offense committed on or after 7/1/12, the defendant "shall be sentenced to incarceration with the Department of Correction for not less than fifteen (15) years" at 100%. T.C.A. § 39-17-1324(j).

36.08 – Carrying Weapon with Intent to go Armed

- a. In Comment 2, delete "and 39-17-1315" and substitute "39-17-1315 and 39-17-1364"

36.12 – Unlawful Possession of a Handgun while under the Influence

- a. "[controlled substance]" appears in the first paragraph of this instruction, in element 2, and three times in the first full paragraph on p. 1102. Each time it appears, insert the following immediately thereafter: **[only for offenses committed on or after 5/15/12: a controlled substance analogue]**
- b. Add the following immediately below element (3) on p.1101, and center it on the page: **[
_____] is a controlled substance analogue.](FN)**
- c. The text of the footnote which appears after this new language will be as follows: The trial judge should include this bracketed language if a controlled substance analogue is alleged in an element and it is one listed in T.C.A. § 39-17-452 as an analogue. If it is not listed, it will be a jury question, and the trial judge should utilize 31.20, Controlled Substance Analogue.

38.01(a) – DUI, etc. (prior to 1/1/11)

- a. Add a Comment 3 with the following text:

In addition to other punishment, a first offender's driver's license shall be revoked for 1 year; for a second offense, 2 years; for a third offense, 3 to 10 years; for a fourth or subsequent offense, 5 years. T.C.A. § 55-10-403(a)(1)(A) (Supp. 2010).

38.01(b) – DUI, etc. (on or after 1/1/11)

- a. "[a controlled substance]" appears in the first paragraph of this instruction, in the first line at the top of p. 1112, in the last full paragraph at the bottom of p.1112, and three times in the paragraph which appears at the top of p. 1113. In each location, insert the following in italics immediately thereafter: **[only for offenses committed on or after 5/15/12: a controlled substance analogue]**
- b. Do not add the analogue language after the controlled substance references in footnote 1. That footnote will retain its current text.
- c. Add a new Comment 3 with the following text:

In addition to other punishment, a first offender's driver's license shall be revoked for 1 year; for a second offense, 2 years; for a third offense, 3 to 10 years if committed prior to 7/1/11 and 6 to 10 years if committed on or after 7/1/11; for a fourth or subsequent offense, 5 years if committed prior to 7/1/11 and 8 years if committed on or after 7/1/11. T.C.A. § 55-10-403(a)(1)(A).

- d. In Comment 1, add the following language after "\$1,000." on the third line from the bottom of the page: For offenses committed on or after 7/1/12, the incarceration enhancement shall be served in addition to, and at the conclusion of, any period of incarceration received for the violation of T.C.A. § 55-10-401. The fine enhancement shall be in addition to any fine imposed for the violation of T.C.A. § 55-10-401.
- e. Add the following immediately below element (4)(c) on p.1112, and center it on the page: [[_____] is a controlled substance analogue.](FN)
- f. The text of the footnote which appears after this new language will be as follows: The trial judge should include this bracketed language if a controlled substance analogue is alleged in an element and it is one listed in T.C.A. § 39-17-452 as an analogue. If it is not listed, it will be a jury question, and the trial judge should utilized 31.20, Controlled Substance Analogue.

38.02 – Driving Under Influence: Lawful Use Not Defense

- a. Move footnote 1 from the end of the first paragraph to the title of the instruction (immediately after the word "defense").
- b. Immediately prior to the term "If" in the first paragraph, add the following: **[For offenses committed prior to 7/1/12:**
- c. Insert a closing bracket after the period which follows "case" at the end of the existing language.
- d. Add the following language to the end of the existing instruction:

[For offenses committed on or after 7/1/12: If it appears from the proof that the defendant was driving under the influence of any intoxicant, marijuana, controlled substance, drug or substance affecting the central nervous system or combination thereof that impairs the driver's ability to safely operate a motor vehicle, it is not a defense to driving under the influence that the defendant was or had been entitled to use one (1) or more of such intoxicants, marijuana, controlled substances, drugs, or substances.

Whether or not the defendant was under the influence of any intoxicant, marijuana, controlled substance, drug or substance affecting the central nervous system or combination thereof is for you to determine based upon all of the proof in the case.]

38.08 – DUI: Supp. Instruction Number One

- a. Add a new Comment 2 with the following text:

In addition to other punishment, a first offender's driver's license shall be revoked for 1 year; for a second offense, 2 years; for a third offense, 3 to 10 years if committed prior to 7/1/11 and 6 to 10 years if committed on or after 7/1/11; for a fourth or subsequent offense, 5 years if committed prior to 7/1/11 and 8 years if committed on or after 7/1/11. T.C.A. § 55-10-403(a)(1)(A).

38.09 – Underage Driving While Impaired – Under 21

- a. Delete Comment 4 and renumber the remaining comments.

38.12 – Reckless Driving

- a. Delete Comment One and substitute the following language:

Reckless driving is a Class B misdemeanor. For offenses committed on or after 7/1/12, a mandatory fine of fifty dollars (\$50.00) over and above any other punishment must also be assessed for county programs to be distributed as provided in T.C.A. § 55-10-452. T.C.A. § 55-10-205(d).

39.05 – Criminal Gang Offenses – Enhanced Punishment

- a. In element (II)(2) on p. 1184, insert the following in italics immediately after “[controlled substance]”: **[only for offenses committed on or after 5/15/12: controlled substance analogue]**
- b. In element (II)(1) on p. 1184, delete “any thing” and substitute “anything”

40.06(b) – Defense: Self-Defense

- a. At the top of page 1215, the word “character” should not be bolded.

42.04 – Credibility of Witness, etc.

- a. Delete the text of footnote 2 and substitute the following: *Lundy v. State*, 752 S.W.2d 98, 103 (Tenn. Crim. App. 1987). See *State v. Glebock*, 616 S.W.2d 897, 906 (Tenn. Crim. App. 1981) (citing *Cupp v. Naughton*, 414 U.S. 141 (1973)).

42.04(b) – Alternative Instruction: Witness

- a. Following the period at the end of the third full sentence in the first paragraph on page 1268 (this sentence ends in “has told the truth”), insert a footnote which has the following text: “*Lundy v. State*, 752 S.W.2d 98, 103 (Tenn. Crim. App. 1987). See *State v. Glebock*, 616 S.W.2d 897, 906 (Tenn. Crim. App. 1981) (citing *Cupp v. Naughton*, 414 U.S. 141 (1973)).”

T.P.I. -- CRIM. 8.08(b)

TRAFFICKING FOR COMMERCIAL SEX ACT

Any person who commits the offense of trafficking for a commercial sex act is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

(1)(a) that the defendant *[subjected]* *[attempted to subject]* *[benefitted from]* *[attempted to benefit from]* another person's providing a commercial sex act;

or

(b) that the defendant *[recruited]* *[enticed]* *[harbored]* *[transported]* *[provided]* *[obtained by any means]* another person for the purpose of providing a commercial sex act;

and

(2) that the defendant acted knowingly.

[and

(3) that the victim of the offense was a child under fifteen (15) years of age;

or

(4) that the offense occurred *[on the [grounds] [facilities]]* *[within one thousand feet (1,000')]* of a *[public or private school]* *[secondary*

*school] [preschool] [child care agency] [public library] [recreational center] [public park].]*²

"By any means" may include, but is not limited to:

- (1) Causing or threatening to cause physical harm to the person;
- (2) Physically restraining or threatening to physically restrain the person;
- (3) Abusing or threatening to abuse the law or legal process;
- (4) Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of the person;
- (5) Using blackmail or using or threatening to cause financial harm for the purpose of exercising financial control over the person; or
- (6) Facilitating or controlling a person's access to a controlled substance.³

"Blackmail" means threatening to expose or reveal the identity of another or any material, document, secret or other information that might subject a person to hatred, contempt, ridicule, loss of employment, social status or economic harm.⁴

"Commercial sex act" means any sexual act for which something of value is given or received.⁵

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware

of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.⁶

The requirement of "knowingly" is also established if it is shown that the defendant acted intentionally.⁷

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.⁸

COMMENTS

1. Trafficking for a commercial sex act is a Class B felony, except it is a Class A felony when the victim of the offense is a child under fifteen (15) years of age, or when the offense occurs on the grounds or facilities or within one thousand feet (1,000') of a public or private school, secondary school, preschool, child care agency, public library, recreational center, or public park. T.C.A. § 39-13-309(c).

¹ T.C.A. § 39-13-309(a).

² T.C.A. § 39-13-309(c).

³ T.C.A. § 39-13-309(b).

⁴ T.C.A. § 39-13-301(2).

⁵ T.C.A. § 39-13-301(4).

⁶ T.C.A. § 39-11-106(a)(20).

⁷ T.C.A. § 39-11-301(a)(2).

⁸ T.C.A. § 39-11-106(a)(18).

T.P.I. – CRIM. 10.05(d)

STATUTORY RAPE BY AN AUTHORITY FIGURE

Any person who commits the offense of statutory rape by an authority figure is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

- (1) that the defendant had unlawful sexual penetration of the alleged victim or the alleged victim had unlawful sexual penetration of the defendant;

and

- (2) that the victim was at least thirteen (13) years of age but less than eighteen (18) years of age;

and

- (3) that the defendant was at least four (4) years older than the victim;

and

- (4)(a) that the defendant was, at the time of the alleged unlawful sexual penetration, in a position of trust, and used such position of trust to accomplish the sexual penetration;

or

- (b) that the defendant had, at the time of the alleged unlawful sexual penetration, *[supervisory]* *[disciplinary]* power over the victim by virtue of the defendant's *[legal]* *[professional]* *[occupational]* status, and used such power to accomplish the sexual penetration;

or

(c) that the defendant had, at the time of the alleged unlawful sexual contact, [parental] [custodial] authority over the victim and used such authority to accomplish the sexual penetration;

and

(5) that the defendant acted either intentionally, knowingly or recklessly.²

"Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the alleged victim's, the defendant's, or any other person's body, but emission of semen is not required.³

["Cunnilingus" means a sex act accomplished by placing the mouth or tongue on or in the vagina of another.]⁴

["Disciplinary power" means the power to demand obedience through the use or threat of punishment.]⁵

["Fellatio" means a sex act accomplished with the male sex organ and the mouth or lips of another. Intrusion into the alleged victim's mouth is not required.]⁶

["Supervisory power" means the power to direct the actions of another.]⁷

"Victim" means the person alleged to have been subjected to criminal sexual conduct.⁸

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.⁹

“Knowingly” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result.¹⁰

“Recklessly” means that a person acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of, but consciously disregards, a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person’s standpoint.¹¹

COMMENTS

1. Statutory rape by an authority figure is a Class C felony. T.C.A. § 39-13-532(b).

2. Although the definitions section, T.C.A. § 39-13-501, enacted in 1989, limited the definitions contained therein to offenses set out in T.C.A. § 39-13-501 to T.C.A. § 39-13-511, the Committee feels that when the offense of statutory rape by an authority figure was created by the legislature in 2006 it was their intent that those definitions apply to this offense as well.

3. A violation of T.C.A. § 39-15-401, child abuse and child neglect, may be a lesser included offense of statutory rape by an authority figure. T.C.A. § 39-15-401(f).

¹ T.C.A. § 39-13-532.

² T.C.A. § 39-11-301(c) and accompanying Sentencing Commission Comment.

³ T.C.A. § 39-13-501(7). See Comment 2.

⁴ This definition is derived from former T.P.I. – Crim. 9.04, Crimes against nature.

⁵ State v. Denton, 149 S.W.3d 1, 18-19 (Tenn. 2004).

⁶ State v. Marcum, 109 S.W.3d 300, 303-04 (Tenn. 2003).

⁷ State v. Denton, 149 S.W.3d 1, 19 (Tenn. 2004).

⁸ T.C.A. § 39-13-501(8). See Comment 2.

⁹ T.C.A. § 39-11-106(a)(18).

¹⁰ T.C.A. § 39-11-106(a)(20).

¹¹ T.C.A. § 39-11-106(a)(31).

T.P.I. -- CRIM. 10.08(a)

**PROMOTING PROSTITUTION OF A [MINOR] [PERSON WITH AN INTELLECTUAL
DISABILITY]**

Any person who commits the offense of promoting prostitution is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

[Part A:

- (1) that the defendant *[owned] [controlled] [managed] [supervised] [kept], [alone] [in association with others] [a business for the purpose of engaging in prostitution] [a house of prostitution];*

and

- (2) that the defendant did so when one (1) or more of the persons engaged in prostitution *[was less than eighteen (18) years of age] [had an intellectual disability];*

and

- (3) that the defendant acted either intentionally, knowingly or recklessly.²

or

[Part B:

- (1) that the defendant procured an inmate for a house of prostitution;

and

- (2) that the defendant did so when one (1) or more of the persons engaged in prostitution *[was less than eighteen (18) years of age] [had an intellectual disability];*

and

- (3) that the defendant acted either intentionally, knowingly or recklessly.^{3]}

or

[Part C:

- (1) that the defendant encouraged, induced or purposely caused another to become a prostitute;

and

- (2) that the defendant did so when one (1) or more of the persons engaged in prostitution *[was less than eighteen (18) years of age] [had an intellectual disability]*;

and

- (3) that the defendant acted either intentionally, knowingly or recklessly.^{4]}

or

[Part D:

- (1) that the defendant solicited a person to patronize a prostitute;

and

- (2) that the defendant did so when one (1) or more of the persons engaged in prostitution *[was less than eighteen (18) years of age] [had an intellectual disability]*;

and

- (3) that the defendant acted either intentionally, knowingly or recklessly.^{5]}

or

[Part E:

(1) that the defendant procured a prostitute for a patron;

and

(2) that the defendant did so when one (1) or more of the persons engaged in prostitution *[was less than eighteen (18) years of age] [had an intellectual disability]*;

and

(3) that the defendant acted either intentionally, knowingly or recklessly.^{6]}

or

[Part F:

(1) that the defendant *[solicited] [received] [agreed to receive]* a benefit for engaging in the activity of (list activities defined in § 39-13-512(4));⁷

and

(2) that the defendant did so when one (1) or more of the persons engaged in prostitution *[was less than eighteen (18) years of age] [had an intellectual disability]*;

and

(3) that the defendant acted either intentionally, knowingly or recklessly.^{8]}

"Prostitution" means engaging in, or offering to engage in, sexual activity as a business or being an inmate in a house of prostitution or loitering in a public place for the purpose of being hired to engage in sexual activity.⁹

"House of prostitution" means any place where prostitution or the promotion of prostitution is regularly carried on by one or more person(s) under the control, management or supervision of another.¹⁰

"Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.¹¹

"Patronizing prostitution" means soliciting or hiring another person with the intent that the other person engage in prostitution, or entering or remaining in a house of prostitution for the purpose of engaging in sexual activity.¹²

"Sexual activity" means any sexual relations including homosexual sexual relations.¹³

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.¹⁴

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.¹⁵

"Recklessly" means that a person acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of, but consciously disregards, a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint.¹⁶

COMMENTS

1. Promoting prostitution of a minor or a person with an intellectual disability is a Class E felony. T.C.A. § 39-13-515.
2. If the definition of an offense within Title 39 does not plainly dispense with a mental element, intent, knowledge or recklessness suffices to establish the culpable mental state. T.C.A. § 39-11-301(c). The Committee is of the opinion that the definitions of “intentionally,” “knowingly,” and “recklessly” should all be charged for this offense.

¹ T.C.A. § 39-13-515 and T.C.A. § 39-13-512(4) and (5).

² T.C.A. § 39-11-301(b) and T.C.A. § 39-11-301(c) and accompanying Sentencing Commission Comment.

³ T.C.A. § 39-11-301(b) and T.C.A. § 39-11-301(c) and accompanying Sentencing Commission Comment.

⁴ T.C.A. § 39-11-301(b) and T.C.A. § 39-11-301(c) and accompanying Sentencing Commission Comment.

⁵ T.C.A. § 39-11-301(b) and T.C.A. § 39-11-301(c) and accompanying Sentencing Commission Comment.

⁶ T.C.A. § 39-11-301(b) and T.C.A. § 39-11-301(c) and accompanying Sentencing Commission Comment.

⁷ List any activities defined in T.C.A. § 39-13-512(4)(A) to T.C.A. § 39-13-512(4)(F).

⁸ T.C.A. § 39-11-301(b) and T.C.A. § 39-11-301(c) and accompanying Sentencing Commission Comment.

⁹ T.C.A. § 39-13-512(6).

¹⁰ T.C.A. § 39-13-512(1).

¹¹ T.C.A. § 39-13-512(2).

¹² T.C.A. § 39-13-512(3).

¹³ T.C.A. § 39-13-512(7).

¹⁴ T.C.A. § 39-11-106(a)(18).

¹⁵ T.C.A. § 39-11-106(a)(20).

¹⁶ T.C.A. § 39-11-106(a)(31).

T.P.I. -- CRIM. 10.15(b)

PUBLIC INDECENCY

(for offenses committed on or after 7/1/12)

Any person who commits the offense of public indecency is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

(1) that the defendant was in a public place;

and

(2)(a) that the defendant engaged in *[sexual intercourse] [masturbation] [sodomy] [bestiality] [oral copulation] [flagellation] [ultimate sex acts]*;

or

(b) that the defendant *[appeared in a state of nudity] [performed an excretory function]*;

or

(c) that the defendant fondled the genitals of *[himself] [herself]* or another person;

and

(3) that the defendant acted knowingly or intentionally.

[and

(4) that the defendant engaged in masturbation by *[self-stimulation] [the use of an inanimate object]* on the property of a *[public school]*

[private or parochial school] [licensed day care center] [child care facility] and the defendant knew or reasonably should have known that a child or children were likely to be present on the property at the time of the conduct.]

"Public place" means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. "Public place" includes, but is not limited to, streets, sidewalks, parks, beaches, business and commercial establishments (whether for profit or not-for-profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement), bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilized by any religious, social, fraternal or similar organizations. Premises used solely as a private residence, whether permanent or temporary in nature, are not deemed to be a public place. "Public place" does not include enclosed single sex functional showers, locker or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctors' offices, portions of hospitals and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein; nor does it include a person appearing in a state of nudity in a modeling class operated by a proprietary school, licensed by the state of Tennessee, a college, junior college, or university supported entirely or partly by taxation, or a private college or university where such private college or university maintains and operates educational programs in which credits are transferable to a college,

junior college, or university supported entirely or partly by taxation or an accredited private college. "Public place" does not include a private facility that has been formed as a family-oriented clothing optional facility, properly licensed by the state.² [**only for elements 2(a) and 2(c):** "Public place" includes a public restroom, whether single sex or not.]³

["Nudity" or "state of nudity" means the showing of the bare human male or female genitals or pubic area with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of the areola, or the showing of the covered male genitals in a discernibly turgid state. "Nudity" or "state of nudity" does not include a mother in the act of nursing the mother's baby.]⁴

["Sodomy" means a sex act accomplished by anal intercourse or a sex act between a person and an animal.]⁵

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.⁶

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.⁷

[It is an exception to this offense that the defendant made intentional and reasonable attempts to conceal *[himself]* *[herself]* from public view while performing an excretory function and the defendant performed such function in

an unincorporated area of the state. If the defendant proves this exception by a preponderance of the evidence,⁸ you must find [him] [her] not guilty.]⁹

COMMENTS

1. A first or second offense of public indecency is a Class B misdemeanor punishable only by a fine of five hundred dollars (\$500). A third or subsequent offense is a Class A misdemeanor punishable by a fine of one thousand five hundred dollars (\$1,500) or confinement for not more than eleven (11) months and twenty-nine (29) days, or both. Where the offense involves the defendant engaging in masturbation by self-stimulation, or the use of an inanimate object, on the property of any public school, private or parochial school, licensed day care center, or other child care facility, and the defendant knows or reasonably should know that a child or children are likely to be present on the property at the time of the conduct, the offense is a Class E felony. If the trial judge grants judicial diversion, the court shall order, as a condition of probation, that the defendant be enrolled in a satellite-based monitoring program for the full extent of the person's term of probation, in a manner consistent with the requirements of § 40-39-302. T.C.A. § 39-13-517(d).

2. The Committee is of the opinion that the language of T.C.A. § 39-13-517(c) are words "of similar import" as the term is used in T.C.A. § 39-11-202 (Exceptions).

¹ T.C.A. § 39-13-517(b).

² T.C.A. § 39-13-517(a)(2).

³ T.C.A. § 39-13-517(a)(2)(A)(ii).

⁴ T.C.A. § 39-13-517(a)(1).

⁵ This definition is derived from *Black's Law Dictionary* (8th Ed. 2004).

⁶ T.C.A. § 39-11-106(a)(20).

⁷ T.C.A. § 39-11-106(a)(18).

⁸ T.C.A. § 39-11-202(b)(2). The trial judge should utilize T.P.I. – Crim. 42.01, Preponderance of evidence.

⁹ T.C.A. § 39-13-517(c).

SOLICITING SEXUAL EXPLOITATION OF A MINOR

Any person who commits the offense of soliciting sexual exploitation of a minor is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

- (1) that the defendant was eighteen (18) years of age or older;

and
- (2) that the defendant, by means of *[[oral] [written] [electronic] communication] [electronic mail] [Internet service] [webcam communications]*, directly or through another intentionally *[commanded] [hired] [persuaded] [induced] [caused]* a minor to engage in *[sexual activity] [simulated sexual activity that was patently offensive]*;

and
- (3) that the *[simulated]* sexual activity was observed by the defendant or another.

"Minor" means any person under eighteen (18) years of age.²

"Patently offensive" means that which goes substantially beyond customary limits of candor in describing or representing such matters.³

"Sexual activity" means any of the following acts:

- (A) vaginal, anal or oral intercourse, whether done with another person or an animal;
- (B) masturbation, whether done alone or with another human or an animal;

- (C) patently offensive, as determined by contemporary community standards, physical contact with or touching of a person's clothed or unclothed genitals, pubic area, buttocks or breasts in an act of apparent sexual stimulation or sexual abuse;
 - (D) sadomasochistic abuse, including flagellation, torture, physical restraint, domination or subordination by or upon a person for the purpose of sexual gratification of any person;
 - (E) the insertion of any part of a person's body or of any object into another person's anus or vagina, except when done as a part of a recognized medical procedure by a licensed professional;
 - (F) patently offensive, as determined by contemporary community standards, conduct, representations, depictions or descriptions of excretory functions;
- or
- (G) lascivious exhibition of the female breast or the genitals, buttocks, anus or pubic or rectal area of any person.⁴

["Community" means the judicial district, (describe judicial district),⁵ in which a violation is alleged to have occurred.]⁶

["Lascivious" means tending to excite lust; lewd; indecent.]⁷

[A "simulated sexual activity" depicts explicit sexual activity which gives the appearance of ultimate sexual acts, anal, oral or genital. "Ultimate sexual acts" means sexual intercourse, anal or otherwise, fellatio, cunnilingus or sodomy.]⁸

“Intentionally” means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.⁹

COMMENTS

1. Soliciting sexual exploitation of a minor is a Class B felony. T.C.A. § 39-13-529(f). A person is subject to prosecution for this offense for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the conduct involved a minor located in this state or the solicitation of a law enforcement officer posing as a minor located in this state. T.C.A. § 39-13-529(d).
2. If there is a question as to the meaning of “contemporary community standards,” the trial judge may wish to refer to the case law on this topic set out in Comment 3 of T.P.I. – Crim. 34.01.

¹ T.C.A. § 39-13-529(a).

² T.C.A. § 39-11-106(a)(23).

³ T.C.A. § 39-13-529(e)(3).

⁴ T.C.A. § 39-13-529(e)(4).

⁵ T.C.A. § 16-2-506.

⁶ T.C.A. § 39-13-529(e)(1).

⁷ *Black’s Law Dictionary* (8th Ed. 2004).

⁸ T.C.A. § 39-17-901(14)(A).

⁹ T.C.A. § 39-11-106(a)(18).

T.P.I. – CRIM. 11.03(b)

FIXING APPARENT VALUE

If you find the defendant guilty of *[forgery]* *[criminal simulation]* beyond a reasonable doubt, you must go further and fix the range of apparent value¹ of the property.

"Apparent Value" is the apparent fair market value of the property at the time and place of the offense. The state has the burden of proving this apparent value beyond a reasonable doubt as defined in these instructions.

"Apparent" means visible, manifest or obvious.

The jury will fix the apparent value of the property along with its verdict by indicating which of the following ranges the apparent value falls within:

1. Five hundred dollars (\$500) or less;
2. More than five hundred dollars (\$500), but less than one thousand dollars (\$1,000);
3. One thousand dollars (\$1,000) or more, but less than ten thousand dollars (\$10,000);
4. Ten thousand dollars (\$10,000) or more, but less than sixty thousand dollars (\$60,000);
5. Sixty thousand dollars (\$60,000) or more [**only for offenses committed on or after 7/1/12:** , but less than two hundred fifty thousand dollars (\$250,000);
6. Two hundred fifty thousand dollars (\$250,000) or more].

¹ *State v. Odom*, 64 S.W.3d 370, 374 (Tenn. Crim. App. 2001).

T.P.I. – CRIM. 30.17(b)

(for offenses committed on or after 7/1/11)

PROVIDING SUPPORT OR RESOURCES FOR TERRORISM

Any person who *[conspires to provide]* *[provides]* material support or resources for terrorism is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

[Part A:

- (1) that the defendant *[attempted² to provide]* *[conspired³ to provide]* *[provided]* material support or resources to any person;

and

- (2)(a) that the defendant knew that person was *[planning]* *[carrying out]* an act of terrorism in Tennessee;

or

- (2)(b) that the defendant knew that person was *[concealing]* *[attempting to escape after committing or attempting⁴ to commit]* an act of terrorism;

and

- (3) that the defendant acted either intentionally, knowingly or recklessly.^{5]}

or

[Part B:

(1) that the defendant [*attempted*⁶ to provide] [*conspired*⁷ to provide] [*provided*] material support or resources to any designated entity;

and

(2) that the defendant had actual knowledge that the entity was a designated entity;

and

(3) that the defendant acted either intentionally, knowingly or recklessly.⁸]

The essential elements necessary to constitute an act of terrorism are (here set out the relevant portions of T.P.I. – CRIM. 30.15).

["Designated entity" means any entity designated by the United States department of state as a foreign terrorist organization in accordance with § 219 of the Immigration and Nationality Act, codified in 8 U.S.C. § 1189, or by the United States department of the treasury as a specially designated national in accordance with 31 CFR part 500.]⁹

"Material support or resources" means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, transportation, and personnel, except medicine or religious materials.¹⁰ "Expert advice or assistance" means advice or assistance derived from scientific, technical, legal or other specialized knowledge, except legal services provided to a defendant in relation to any action brought pursuant to this part, or pursuant to federal or state law.¹¹ "Training"

means instruction or teaching designed to impart a specific skill, as opposed to general knowledge.¹²

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.¹³

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.¹⁴

"Recklessly" means that a person acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of, but consciously disregards, a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint.¹⁵

[It is not a defense that the defendant felt justified in committing these acts for religious reasons.]¹⁶

[It is a defense to prosecution for this offense that the material support or resources provided were any financial service, funds transfer, or securities transaction conducted in the ordinary course of business by a financial institution subject to the information sharing, suspicious activity reporting, or currency transaction reporting requirements of the Bank Secrecy Act (31 U.S.C. § 5311 et

seq.), or the U.S.A. Patriot Act (PL 107-56); provided, however, that it is not a defense available to any such institution that acts with the intent to assist, aid, or abet any person planning or carrying out an act of terrorism in Tennessee, or concealing or attempting to escape after committing or attempting to commit an act of terrorism. "Financial institution" shall have the meaning provided in 31 CFR chapter X.^{17]}¹⁸

COMMENTS

1. Providing support or resources for terrorism is a Class A felony.

¹ T.C.A. § 39-13-807(a).

² The trial judge may wish to charge Criminal Attempt in appropriate fact situations. See T.P.I. – Crim. 4.01 (Criminal Attempt).

³ The trial judge may wish to charge Conspiracy in appropriate fact situations. See T.P.I. – Crim. 4.03 (Criminal Conspiracy).

⁴ The trial judge may wish to charge Criminal Attempt in appropriate fact situations. See T.P.I. – Crim. 4.01 (Criminal Attempt).

⁵ T.C.A. § 39-11-301(c) and accompanying Sentencing Commission Comment.

⁶ The trial judge may wish to charge Criminal Attempt in appropriate fact situations. See T.P.I. – Crim. 4.01 (Criminal Attempt).

⁷ The trial judge may wish to charge Conspiracy in appropriate fact situations. See T.P.I. – Crim. 4.03 (Criminal Conspiracy).

⁸ T.C.A. § 39-11-301(c) and accompanying Sentencing Commission Comment.

⁹ T.C.A. § 39-13-803(4).

¹⁰ T.C.A. § 39-13-803(7).

¹¹ T.C.A. § 39-13-803(5).

¹² T.C.A. § 39-13-803(9).

¹³ T.C.A. § 39-11-106(a)(18).

¹⁴ T.C.A. § 39-11-106(a)(20).

¹⁵ T.C.A. § 39-11-106(a)(31).

¹⁶ T.C.A. § 39-13-809.

¹⁷ T.C.A. § 39-13-803(6).

¹⁸ T.C.A. § 39-13-807(c).

**CONTROLLED SUBSTANCE ANALOGUES: MANUFACTURE, DELIVERY,
DISPENSING OR SALE**

Any person who commits the offense of unlawful *[manufacture]* *[delivery]* *[dispensing]* *[sale]* of a controlled substance is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

(1) that the defendant *[manufactured]* *[delivered]* *[dispensed]* *[sold]* *[specify controlled substance analogue]*, a controlled substance analogue;

and

(2) that the defendant acted knowingly;

[and

(3) that the offense involved the *[manufacture]* *[delivery]* *[dispensing]* *[sale]* of the controlled substance analogue to a minor.]

[_____] is a controlled substance analogue.]²

["Sell" or "sale" means a bargained-for offer and acceptance and an actual or constructive transfer or delivery of the substance.]³

["Minor" means any person under eighteen (18) years of age.]⁴

"Knowingly" means that a person acts knowingly with respect to the conduct or to the circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts

knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.⁵

The requirement of "knowingly" is also established if it is shown that the defendant acted intentionally.⁶

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.⁷

COMMENTS

1. A first violation of this offense is a Class D felony. A second or subsequent violation is a Class C felony. If the offense involves the delivery, dispensing or sale of a controlled substance analogue to a minor, the defendant shall be punished one classification higher than the punishment for delivering, dispensing or selling to an adult. T.C.A. § 39-17-454(g).

2. If the substance in question is listed as prohibited in T.C.A. § 39-17-452, it is a controlled substance analogue by law and the jury can be so instructed. T.C.A. § 39-17-454(a)(1)(C). If not, it becomes a jury question and T.P.I. 31.20, Controlled substance analogue, must be given, which is a slight rewording of T.C.A. § 39-17-454(a) and (b).

¹ T.C.A. § 39-17-454(c).

² See Comment 2.

³ *State v. Holston*, 94 S.W.3d 507, 510 (Tenn. Crim. App. 2002).

⁴ T.C.A. § 39-11-106(a)(23).

⁵ T.C.A. § 39-11-106(a)(20).

⁶ T.C.A. § 39-11-301(a)(2).

⁷ T.C.A. § 39-11-106(a)(18).

**CONTROLLED SUBSTANCE ANALOGUES: POSSESSION WITH INTENT
TO MANUFACTURE, DELIVER, DISPENSE OR SELL**

Any person who knowingly possesses with intent to *[manufacture]* *[deliver]* *[dispense]* *[sell]* a controlled substance analogue is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

- (1) the defendant knowingly possessed *[specify controlled substance analogue]*, a controlled substance analogue;

and

- (2) the defendant intended to *[manufacture]* *[deliver]* *[dispense]* *[sell]* such controlled substance analogue;

[_____] is a controlled substance analogue.]²

["Sell" or "sale" means a bargained-for offer and acceptance and an actual or constructive transfer or delivery of the substance.]³

[There are two types of possession recognized in the law: actual possession and constructive possession. A person who knowingly has direct physical control over an object at a given time is then in actual possession of it. A person who, although not in actual possession, knowingly has both the power and intention at any given time to exercise dominion and control over an object is then in constructive possession of it.]⁴

[The law also recognizes that possession may be sole or joint.⁵ If one (1) person alone has actual or constructive possession of a thing, possession is sole. If two (2) or more persons have actual or constructive possession of a thing, their possession is joint.]

[It may be inferred⁶ from the amount of controlled substance analogue possessed by an offender, along with other relevant facts surrounding the arrest, that the controlled substance analogue was possessed with the purpose of selling or otherwise dispensing it.]⁷

[It may be inferred⁸ from circumstances indicating a casual exchange among individuals of a controlled substance analogue that the controlled substance analogue so exchanged was possessed not with the purpose of selling or otherwise dispensing it.⁹ You are instructed that "exchange" means to part with, give, or transfer a substance in consideration of something received as an equivalent.¹⁰ "Casual" means without design. The term "casual exchange" does not exclude a transaction in which money is involved. SEE COMMENT THREE]¹¹

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.¹²

The requirement of "knowingly" is also established if it is shown that the defendant acted intentionally.¹³

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.¹⁴

COMMENTS

1. A first violation of this offense is a Class D felony. A second or subsequent violation is a Class C felony. T.C.A. § 39-17-454(g).
2. If the substance in question is listed as prohibited in T.C.A. § 39-17-452, it is a controlled substance analogue by law and the jury can be so instructed. T.C.A. § 39-17-454(a)(1)(C). If not, it becomes a jury question and T.P.I. 31.20, Controlled substance analogue, must be given, which is a slight rewording of T.C.A. § 39-17-454(a) and (b).
3. Even though casual exchange is not a lesser included offense of possession with intent to sell or deliver, *State v. Nelson*, 275 S.W.3d 851, 865 (Tenn. Crim. App. 2008) (citing *State v. Timothy Wayne Grimes*, No. M2001-01460-CCA- R3-CD, 2002 WL 31373472, at *6 (Tenn. Crim. App. Oct. 16, 2002)), our courts have held that if there is evidence from which a jury could reasonably infer that there was an exchange, the inference must be charged. *Grimes*, at *6.

¹ T.C.A. § 39-17-454(c).

² See Comment 2.

³ *State v. Holston*, 94 S.W.3d 507, 510 (Tenn. Crim. App. 2002).

⁴ *State v. Williams*, 623 S.W.2d 121 (Tenn. Crim. App. 1981).

⁵ *State v. Copeland*, 677 S.W.2d 471 (Tenn. Crim. App. 1984).

⁶ The trial judge should utilize T.P.I. – Crim. 42.19, Inferences.

⁷ T.C.A. § 39-17-454(e).

⁸ The trial judge should utilize T.P.I. – Crim. 42.19, Inferences.

⁹ T.C.A. § 39-17-454(e).

¹⁰ Webster's Third New International Dictionary (1983), cited in *State v. Helton*, 507 S.W.2d 117 (Tenn. 1974).

¹¹ *State v. Helton*, 507 S.W.2d 117 (Tenn. 1974).

¹² T.C.A. § 39-11-106(a)(20).

¹³ T.C.A. § 39-11-301(a)(2).

¹⁴ T.C.A. § 39-11-106(a)(18).

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

- [_____ is a controlled substance analogue.]²

[There are two types of possession recognized in the law: actual possession and constructive possession. A person who knowingly has direct physical control over an object at a given time is then in actual possession of it. A person who, although not in actual possession, knowingly has both the power and intention at any given time to exercise dominion and control over an object is then in constructive possession of it.]³

[The law also recognizes that possession may be sole or joint.⁴ If one (1) person alone has actual or constructive possession of a thing, possession is sole. If two (2) or more persons have actual or constructive possession of a thing, their possession is joint.]

[It may be inferred⁵ from circumstances indicating a casual exchange among individuals of a controlled substance analogue that the controlled substance analogue so exchanged was possessed not with the purpose of selling or otherwise dispensing it.⁶ You are instructed that "exchange" means to part with, give, or transfer a substance in consideration of something received as an equivalent.⁷ "Casual" means without design. The term "casual exchange" does not exclude a transaction in which money is involved.]⁸

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.⁹

The requirement of "knowingly" is also established if it is shown that the defendant acted intentionally.¹⁰

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.¹¹

COMMENTS

1. A violation of this offense is a Class A misdemeanor. T.C.A. § 39-17-454(g)(4).

2. If the substance in question is listed as prohibited in T.C.A. § 39-17-452, it is a controlled substance analogue by law and the jury can be so instructed. T.C.A. § 39-17-454(a)(1)(C). If not, it becomes a jury question and T.P.I. 31.20, Controlled substance analogue, must be given, which is a slight rewording of T.C.A. § 39-17-454(a) and (b).

¹ T.C.A. § 39-17-454(d).

² See Comment 2.

³ State v. Williams, 623 S.W.2d 121 (Tenn. Crim. App. 1981).

⁴ State v. Copeland, 677 S.W.2d 471 (Tenn. Crim. App. 1984).

⁵ The trial judge should utilize T.P.I. – Crim. 42.19, Inferences.

⁶ T.C.A. § 39-17-454(e).

⁷ Webster's Third New International Dictionary (1983), cited in State v. Helton, 507 S.W.2d 117 (Tenn. 1974).

⁸ State v. Helton, 507 S.W.2d 117 (Tenn. 1974).

⁹ T.C.A. § 39-11-106(a)(20).

¹⁰ T.C.A. § 39-11-301(a)(2).

¹¹ T.C.A. § 39-11-106(a)(18).

CONTROLLED SUBSTANCE ANALOGUE

One of the issues in this case is whether the substance allegedly *[possessed] [manufactured] [delivered] [dispensed] [sold] [casually exchanged]* was a controlled substance analogue. The state has the burden of proving this fact beyond a reasonable doubt.

"Controlled substance analogue" means a capsule, pill, powder, product or other substance, however constituted:

- (A) That has the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance; and
- (B) The chemical structure of which is a derivative of, or substantially similar to, the chemical structure of a controlled substance.

"Controlled substance analogue" does not include:

- (A) A controlled substance;
- (B) Any substance for which there is an approved use or new drug application by the federal food and drug administration;
- (C) Any compound, mixture, or preparation that contains any controlled substance that is not for administration to a human being or animal, and that is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse; or
- (D) Any substance to which an investigational exemption applies under Section 505 of the Food, Drug and Cosmetic Act, 21 U.S.C. § 355, but

only to the extent that conduct with respect to the substance is pursuant to such exemption.

In determining whether a substance is a controlled substance analogue, you shall consider the following factors along with any other relevant factors produced in the proof at trial:

- (A) The difference between the price at which the substance is sold and the price at which the substance it is purported to be or advertised as is normally sold;
- (B) Its diversion from legitimate channels, and its clandestine importation, manufacture, or distribution;
- (C) The defendant's prior convictions, if any, for a violation of any state or federal statute prohibiting controlled substances or controlled substance analogues; and
- (D) Comparisons with accepted methods of marketing a legitimate nonprescription drug for medicinal purposes rather than for the purpose of drug abuse or any similar nonmedical use, including:

- (1) The packaging of the substance and its appearance in overall finished dosage form;
- (2) Oral or written statements or representations concerning the substance;
- (3) The methods by which the substance is distributed; and
- (4) The manner in which the substance is sold to the public.

In determining whether a substance is a controlled substance analogue,
you may also consider the following scientific or pharmacological factors:

- (A) Its actual or relative potential for abuse;
- (B) Scientific evidence of its pharmacological effect, if known;
- (C) The state of current scientific knowledge regarding the substance;
- (D) The history of the substance and its current pattern of abuse;
- (E) The scope, duration and significance of abuse;
- (F) What, if any, risk there is to the public health;
- (G) Its psychic or physiological dependence liability; and
- (H) Whether the substance is an immediate precursor of a controlled substance.

Again, the state has the burden of proving the identity of the substance alleged as a controlled substance analogue. If after considering all the proof you have a reasonable doubt that the substance at issue is a controlled substance analogue, you must find the defendant not guilty.

COMMENTS

1. If the substance in question is listed as prohibited in T.C.A. § 39-17-452, it is a controlled substance analogue by law and the jury can be so instructed. T.C.A. § 39-17-454(a)(1)(C). If not, it becomes a jury question and this instruction must be given, which is a slight rewording of T.C.A. § 39-17-454(a) and (b).

T.P.I. – CRIM. 34.09

EXPLOITATION OF A MINOR [BY ELECTRONIC MEANS]

Any person who commits the offense of exploitation of a minor *[by electronic means]* is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

[PART A:

- (1) that the defendant was eighteen (18) years of age or older;

and
- (2) that the defendant *[directly] [by means of [electronic communication] [electronic mail] [Internet service] [webcam communications]]*, engaged in *[sexual activity] [simulated sexual activity that was patently offensive]*;

and
- (3) that this activity was for the purpose of having a minor view the *[simulated] sexual activity [in the presence of the defendant] [by means of [electronic communication] [electronic mail] [Internet service] [webcam communications]]*;

and
- (4) that the defendant acted intentionally.]

or

[PART B:

- (1) that the defendant was eighteen (18) years of age or older;

and

(2) that the defendant *[directly] [by means of [electronic communication]*
[electronic mail] [Internet service] [webcam communications]], *[displayed*
to a minor] [exposed a minor to] any material containing *[sexual activity]*
[simulated sexual activity that was patently offensive];

and

(3) that the purpose of the display could reasonably be construed as being for
the sexual arousal or gratification of the minor or the defendant displaying
the material;

and

(4) that the defendant acted intentionally.]

or

[PART C:

(1) that the defendant was eighteen (18) years of age or older;

and

(2) that the defendant *[directly] [by means of [electronic communication]*
[electronic mail] [Internet service] [webcam communications]], displayed to
a law enforcement officer posing as a minor any material containing
[sexual activity] [simulated sexual activity that was patently offensive];

and

(3) that the defendant reasonably believed the law enforcement officer to be
less than eighteen (18) years of age;

and

- (4) that the purpose of the display could reasonably be construed as being for the sexual arousal or gratification of the intended minor or the defendant displaying the material;

and

- (5) that the defendant acted intentionally.

["Law enforcement officer" means an officer, employee or agent of government who has a duty imposed by law to:

- (A) maintain public order;

or

- (B) make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses;

and

- (C) investigate the commission or suspected commission of offenses.]²

["Material" means:

- (A) Any picture, drawing, photograph, undeveloped film or film negative, motion picture film, videocassette tape or other pictorial representation;

- (B) Any statue, figure, theatrical production or electrical reproduction;

- (C) Any image stored on a computer hard drive, a computer disk of any type, or any other medium designed to store information for later retrieval;

or

- (D) Any image transmitted to a computer or other electronic media or video screen, by telephone line, cable, satellite transmission, or other method

that is capable of further transmission, manipulation, storage or accessing,
even if not stored or saved at the time of transmission.]]³

"Minor" means any person under eighteen (18) years of age.⁴

"Patently offensive" means that which goes substantially beyond customary limits
of candor in describing or representing such matters.⁵

"Sexual activity" means any of the following acts:

- (A) vaginal, anal or oral intercourse, whether done with another person or an animal;
- (B) masturbation, whether done alone or with another human or an animal;
- (C) patently offensive, as determined by contemporary community standards, physical contact with or touching of a person's clothed or unclothed genitals, pubic area, buttocks or breasts in an act of apparent sexual stimulation or sexual abuse;
- (D) sadomasochistic abuse, including flagellation, torture, physical restraint, domination or subordination by or upon a person for the purpose of sexual gratification of any person;
- (E) the insertion of any part of a person's body or of any object into another person's anus or vagina, except when done as a part of a recognized medical procedure by a licensed professional;
- (F) patently offensive, as determined by contemporary community standards, conduct, representations, depictions or descriptions of excretory functions;

or

(G) lascivious exhibition of the female breast or the genitals, buttocks, anus or pubic or rectal area of any person.⁶

["Community" means the judicial district, (describe judicial district),⁷ in which a violation is alleged to have occurred.]⁸

["Lascivious" means tending to excite lust; lewd; indecent.]⁹

[A "simulated sexual activity" depicts explicit sexual activity which gives the appearance of ultimate sexual acts, anal, oral or genital. "Ultimate sexual acts" means sexual intercourse, anal or otherwise, fellatio, cunnilingus or sodomy.]¹⁰

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.¹¹

COMMENTS

1. Exploitation of a minor [by electronic means] is a Class E felony. If the child is less than thirteen (13) years of age, it is a Class C felony. T.C.A. § 39-13-529(f). A person is subject to prosecution for this offense for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the conduct involved a minor located in this state or the solicitation of a law enforcement officer posing as a minor located in this state. T.C.A. § 39-13-529(d).

2. If there is a question as to the meaning of "contemporary community standards," the trial judge may wish to refer to the case law on this topic set out in Comment 3 of T.P.I. - Crim. 34.01.

¹ T.C.A. § 39-13-529(b).

² T.C.A. § 39-11-106(a)(21).

³ T.C.A. § 39-13-529(e)(2).

⁴ T.C.A. § 39-11-106(a)(23).

⁵ T.C.A. § 39-13-529(e)(3).

⁶ T.C.A. § 39-13-529(e)(4).

⁷ T.C.A. § 16-2-506.

⁸ T.C.A. § 39-13-529(e)(1).

⁹ *Black's Law Dictionary* (8th Ed. 2004).

¹⁰ T.C.A. § 39-17-901(14)(A).

¹¹ T.C.A. § 39-11-106(a)(18).